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RERUM BRITANNICARUM MEDII ÆVI
SCRIPTORES

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN
AND IRELAND

DURING

THE MIDDLE AGES.

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THE CHRONICLES AND MEMORIALS
OF
GREAT BRITAIN AND IRELAND
DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HIS MAJESTY'S TREASURY,
UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

ON the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an *Editio Princeps*; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished ; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

Dear Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEAR XVII.



Dear Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEAR XVII.

EDITED AND TRANSLATED

BY

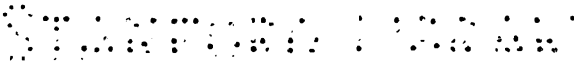
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INTRODUCTION.

must be remembered that before the thirty-sixth year of the reign of Edward III. the French of the reports was a living language—the actual language spoken in the Courts—but after a Statute of that year¹ it became merely a professional language made whatever the lawyers were pleased to make it. As an almost necessary consequence, when a manuscript of the earlier part of the reign of Edward III. was transcribed for printing in the reign of Henry VIII. the transcript partook not a little of the nature of the later legal language. It was also, like all other transcripts, not free from clerical errors, and when it fell into the hands of the printers it was reproduced with an additional crop of mistakes.

Philological as well as historical value of the original MSS.

It was also remarked in the year 1800 that “such a valuable monument of practical law and jurisprudence as the Year Books probably does not exist in any other country.”² This again, however true, is not a full statement of the case as applied to the original manuscripts of the Year Books and to the corresponding records, which ought always to be consulted. “The earlier language of the Year Books,” as a branch of the *Langue d’Oïl*, “is indeed of unique philological value, for it is a representation or an attempted representation of the language of every day life as actually spoken, to which the nearest approach in most of the dead languages is that of the Drama.”³ In these manuscript reports we thus see “living men, dealing with the facts in their own language, in the spirit of their own age, in tones which reveal what manner of men they

¹ 36 Edw. III., c. 15.

² First Report of the Select Committee on the Public Records (1800) p. 381. This is still more forcibly put by Sir F. Pollock and Professor Maitland:—“They should be our glory, for no other country has anything like them: they are

our disgrace, for no other country would have so neglected them.” *The History of English Law*. Introd. p. xxxv.

³ *The Manuscripts of the “Year Books,” and the Corresponding Records* by L. O. Pike. *The Green Bag*, Vol. 12, p. 537.

were."¹ For social history, too—for the history of manners, customs, and sentiments in all classes—the Year Books, as illustrated by the corresponding records, afford an almost inexhaustible mine, though when unilluminated by the rolls they lose more than half their value for general historical purposes.

I have, as usual, searched the various rolls for the records corresponding with the reports in this volume, and I trust that I have not passed over any case in any of the rolls which can be identified with a reported case. I much regret that my scheme² for a Calendar of all the cases pleaded to issue on the *Placita de Banco*, running *pari passu* with the editing of the Year Books, is suspended for the present. I made some progress with it while I was Legal Inspecting Officer, and Assistant-Keeper of the Records. I resigned those posts at the end of the year 1899 for good and sufficient reasons, which it is needless to specify here, but one of which was that I might have more time at my disposal for work both on the Year Books and on the Calendar. There is not, however, as yet, any special grant from the Treasury, which would be necessary before the Calendar could be resumed by me.

Records compared with them for the present edition, but the Calendar of *Placita de Banco* suspended.

I carried it, in manuscript, far enough to satisfy myself that it can be brought within reasonable dimensions, notwithstanding the enormous bulk of the rolls, and that the information which it would give would practically open a new source of history, as the reported cases are but a small portion of those which reached final judgment or issue. The Court of Common Pleas was described by Sir Edward Coke as the "lock and key of the Common Law," and the records of its judicial proceedings are necessarily extremely technical in

¹ *An Action at Law in the Reign of Edward III.: The Report and the Record*, by L. O. Pike. *Harvard Law Review*, Vol. VII. p. 277.

² As to this scheme see the Introductions to the Y.B. 16 Edw. III., Part I., p. xvii., and Part II., p. xi.

character. Owing probably to the difficulties which they present to laymen, nothing (except the references in the present series of Year Books) has been done to make their contents, or even the general nature of them, known to the public, though they constitute no inconsiderable portion of the documents which are in the statutory custody of the Master of the Rolls.

The same remark, indeed, is applicable to most of the judicial records in the Public Record Office, which show the common law at work, and illustrate the every-day life of the people.¹ They have received but little official attention since the time of Sir Francis Palgrave, the first Deputy Keeper of the Records, who was also both lawyer and historian, and who died in the year 1861.

The work on the Glossary, continued. Though, however, the Calendar of the *Placita de Banco* is suspended, the work on the Glossary of the language of the early Year Books still goes on, as it was part of the original scheme of the Rolls edition.

Description of the several editions of Year Books of the year 17 Edward III.: John Rastell's. The earliest edition of the Reports of the year 17 Edward III. is, so far as I have been able to ascertain, one commonly believed to have been printed by John Rastell. It bears neither name nor date in the copies which are in the British Museum, and in the Libraries of Lincoln's Inn and Trinity College, Dublin (I. cc. 7). Though copies of it are now bound with those of reports of other years, it could, when

¹ With regard to the Public Records in general (judicial as well as others) in relation to the Year Books see the article in the *Green Bag* to which reference has been made above. For the discovery that most of the King's Rolls of

the Common Bench, which are the complement of the *Placita de Banco*, or Rolls of the Justices, are described as records of the King's Bench, see Year Books 16 Edw. III. Part II., Introd. pp. xxv-xxix.

first produced, certainly have been bought by itself, as it contains, at the end, the statement that "The price of thys boke is xvi ſ un bownde."

The authorities of the British Museum have, in their Catalogue, (5805, a. 1.) given the date of publication (but with a query) as 1583, and J. Rastell (in brackets) as the name of the printer or publisher.¹ Ames² (or Herbert) also mentions Rastell as the printer, or as having "had at least some concern" in the printing of the reports of the years 17 and 18 Edward III., because they are printed in the same type as an early edition of the *Liber Assisarum*. For the same reason, however, he was of opinion that Wynkyn de Worde might also have been concerned in them.³ He described the type as the "running secretary" of the time, and believed that it might be of foreign origin.

In this edition the reports extend over 79 folios, the back of the last folio being not quite filled. An eightieth folio is occupied with a table showing the nature of the actions reported in the several terms of the year.

Next in chronological order we come to the editions ^{Tothill's edition, No. 1} the printing of which is commonly attributed to Richard Tothill (to use the modern form of the name), Tottill, Tottel, Tottell, Tottyl, or Tottyll, &c., in whose time uniformity of spelling was unknown. The impressions bear no date and no name. The authorities of the British Museum recognise two editions. One of these is assigned to the year 1561, the other to the year 1584.

The British Museum copy of the reports of 17 Edward III. assigned to the year 1561 (5805, aa. 5.) is bound up with reports of the year 18 Edward III.,

¹ The years in and between which Rastell printed are given as 1516-1533 in the *Hand Lists of English Printers*, published by the Bibliographical Society, Part II.

² *Typographical Antiquities* (by Herbert) 1785, Vol. I., p. 345.

³ *Typographical Antiquities*, Vol. I., p. 340, and pp. 235-6.

also attributed to Tothill and assigned to the year 1561 (but bearing no name or date), and with reports of the years 21, 29, 30, 38 and 39 Edward III., all of which have Tothill's imprint with the year 1561. Between years 21 and 29, however, are bound reports of the years 22-28, which were printed by Thomas Berthelet in 1532. There is in the Bodleian Library a volume which agrees with this in all respects. In the catalogue years 17 and 18 are there assigned to Tothill and to the sixteenth century.

I have, however, recently succeeded in purchasing a set of Year Books in which the volume extending, like those in the British Museum and the Bodleian Library, from the seventeenth to the thirty-ninth year of the reign, contains the same edition of years 17 and 18, an edition of years 22-24 published by Tothill in 1567, and an edition of years 25-28 also published by Tothill in 1567, together with the 1561 edition of years 21, 29, 30, 38 and 39. A careful inspection of this volume has led me to the conclusion that the reports which it contains of the 17th year were really printed by Tothill; and the type used for the text seems to me to be clearly that which he used in 1561. The side-titles too (though not usually the references to Fitzherbert's *Abridgment*) are in Black Letter, while the side-titles printed in 1567 are in the Roman character. In the *Liber Assisarum* also printed by Tothill in 1561 (with the date on the title-page, and in the colophon) the side-titles are in Black Letter, but in the edition of the Year Books 1-10 Edward III. printed by him in 1562 they are in the Roman character. We thus arrive at the date 1562, as that at which Tothill had abandoned the black letter character for his side-titles, and it therefore appears that whatever was printed by him and retains them is of earlier date.¹

¹ The converse of this proposition | Tothill with side-notes in the
(i.e., that whatever was printed by | Roman character is of later date

The undated edition of the reports of the year 17 Edward III. assigned by the authorities of the British Museum to the year 1584 is bound up in one volume (507, h. 18.) with undated reports of the 18th year, and with reports of other years from 21 to 39 Edward III., all of which bear Tothill's name and the date 1584 or 1585. A volume similar in all respects, which is the property of the Boston Book Company, has been kindly lent to me by Mr. Soule, and it seems probable that to this as to the earlier Tothill's edition of the year 17 there never was any name or date.

The fact that, in two instances, year 17 has been bound up with other years undoubtedly printed by Tothill in 1584 and 1585 might at first sight be thought some evidence that a previous generation had good reason to suppose that it was printed in one of those years. Bindings, however, are of but little value as guides in matters of this kind. There is, moreover, in the library of Trinity College, Dublin (I. ee. 80), a volume containing the edition of years 17 and 18 attributed in the British Museum to the year 1584 bound up with Tothill's year 21 published in 1584, and his years 29, 30, 38 and 39 published in 1585, but also with his years 22-28 published in 1567. As we have seen, Berthelet's years 22-28 printed in 1582 have, in two instances, been bound up with Tothill's years 21, 29, 30, 38 and 39, printed in 1561. A still more curious illustration occurs in the volume belonging to Lincoln's Inn Library, which contains the edition of

than 1561) could not be maintained. Though the earliest of his editions of Year Books, *e.g.*, 20 Henry VI., published the 11th of September, 1558 (British Museum, 508, e. 21), and 14 Henry IV., published the 26th of January, 1553-4 (Lincoln's Inn Library) have black letter side-titles, he began to substitute the Roman character as

early as 1555, *e.g.*, in his edition of years 40-50 Edward III. (Trinity College, Dublin, Library, I. cc. 8), in which the date 1555 is given on the title-page and 1556 in the colophon. I have, however, examined a great number of Tothill's dated editions of the Year Books without finding any black letter side-titles printed after 1561.

the Reports of 17 Edward III., attributed to Rastell. It has reports of the year 9 Henry IV. printed by Robert Wyre (without date) bound between those of the year 28 Edward III., printed in 1532 by Berthelet, and those of the year 29 Edward III. printed (without date) by Robert Redman.

The evidence that the undated later edition of the year 17 Edward III. attributed to Tothill is really his, is very much stronger than that of any binding. The same type appears to have been used for this year as for the other years in the same volume produced in 1584 and 1585, and there is therefore no reason to doubt that it is Tothill's. It differs, however, considerably from the type used in or before 1561. The side-titles, as in Tothill's other prints of Year Books later than 1561, are in the Roman character; there are innumerable small differences also in the spelling and in the abbreviations; and there are some misprints in the numbers of the folios which do not appear in the earlier edition.¹

We thus have three editions of the reports of the year 17 Edward III., printed without date or name, the two last of which may without much doubt be assigned to Tothill, one approximately to the year 1561, the other approximately to the year 1584.²

¹ As, however, has been suggested by Mr. Soule, and as will appear below, in the remarks on the edition of 1619, slight variations in the numbering of folios will not suffice to prove that two copies do not belong to the same edition.

² Mr. Soule in his most valuable article "Year Book Bibliography," 14 *Harvard Law Review*, 572, attributes four distinct impressions (though not necessarily editions) of 17 Edward III., to Tothill, but adds in notes that the supposed edition of 1561, which is mentioned

by Ames and Herbert (II., 813), had not been identified, and that other copies had not been closely compared. Tothill seems to have published two editions, but I have found no evidence of more. Of the first of these, published probably about 1561 (to recapitulate) I have seen three copies—one in the British Museum (5805, aa. 5), one in the Bodleian Library, and one in my own possession. The side-titles (except the references to Fitzherbert's *Abridgment*) are in black letter in all of them, and there are

There is, so far as I have been able to discover, no dated edition, and no edition bearing any name, before the seventeenth century.

In the year 1619 there appeared "Le Second Part ^{The edition of the Company of Stationers, 1619.} de les Reports del cases in Ley, que fuerunt argue "in le temps de le tres haute & puissant Prince, Roy Edward le tierce. Ore novelment imprimie, corrige, & amende, avec les Notations & references al "Abridgement del tres Reuerend et Sage Judge de "cest Realme Fitzherbert. London, Printed for the "Companie of Stationers." It contains reports of the years 17, 18, 21-30 inclusive, 38, and 39, reprinting the matter which had already been printed, and leaving the gaps which had previously been left. It has, at the end, a "Table" with references to all the years.

I have examined two copies of this edition, one in the British Museum (504, i. 20), the other in the Chetham Library at Manchester. Both have many errors in the numbers of the folios, but they do not agree in all respects, as some of the mistakes which appear in the Chetham Library copy are not in the British Museum copy. Among these may be mentioned folio 49. of the year 18 which appears as 46, folio 56 which appears as 36, and folio 57 which appears as 75 in the Chetham Library copy. It seems to follow either that slight corrections were occasionally made, or that mistakes crept in through the dropping out of figures before all the impressions of an edition were worked off. Of the two copies that in the Chetham Library may be

no errors in the numbers of the folios. Of the second of the two editions, published probably about 1584, I have also seen three copies—one in the British Museum (507, h. 18), one in the Library of Trinity College, Dublin (I. ee. 30), and one belonging to the Boston Book

Company. The side-titles are in the Roman character in all of them, and they all have the errors in the numbers of the folios to which Mr. Soule has called attention, viz., folio xlii misprinted xlii, and folios lx and lxiii duplicated.

either the earlier or the later. It is, at any rate, in an old binding which may at some time have had a chain attached to it.

The
edition of
1679.

After the edition of 1619 came that of 1678-80, which is sometimes called the Standard Edition of the Year Books, and which booksellers commonly describe in their catalogues as "the best." It is certainly the most complete, as it includes the reports of the reign of Edward II., which had not previously been printed, as well as a reprint of all those which had been published before. The printers of the whole were George Sawbridge, William Rawlins, and Samuel Roycroft, assigns of Richard and Edward Atkins, Esquires. The volume containing the reports of the reign of Edward II. was published in the year 1678, the "*Long Quinto*" of the reign of Edward IV. in 1680, all the rest in the year 1679. On the title page of the first it is stated that the cases of the reign of Edward II., together with some "*Memoranda*" of the Exchequer of the time of Edward I., were printed from ancient manuscripts in the possession of Sir John Maynard, Sergeant-at-Law.

The matter relating to the reign of Edward I. consists only of some extracts from the "*Memoranda*" or Remembrance Rolls of the Exchequer, and does not in any sense constitute a portion of the regular series of reports. The matter relating to the time of Edward II. does, however, constitute an addition of a whole reign to that series, but no effort appears to have been made either to fill up the other gaps or to correct what had already been published by collation of different MSS. or reference to the records.

The third volume of this edition which contains the reports of the year 17 Edward III. is exactly co-extensive with the volume of the edition of 1619 which contains the reports of that year. The title page is, apart from some slight printer's variations, a reproduction of the title page of 1619.

There were thus five editions of the reports of 17 Edward III. published in or between the early part of the sixteenth century and the year 1679. The four last of them do not show any signs of any editorial workmanship worthy of the name, and, although we are told of corrections and amendments in the last two, it is clear that the principal object kept in view in each of them was to make its folios or pages agree in number with those of its predecessors, so that any reference made to an earlier would be applicable to a later edition. Each edition is a reprint of its predecessor or predecessors, folio for folio, though some space has been saved in the edition of 1679 by printing both the front and the back of a previous folio on one page.

Each of the last four editions is a reprint of its predecessor, folio for folio, without collation of MSS. or reference to records.

It follows that no later edition has any higher authority than that which was published first, and the printing of which is attributed to Rastell. The manuscript or manuscripts upon which that was founded must be the foundation of them all, because the omissions and additions which are always discovered in the collation of different manuscripts are too numerous and too lengthy to be harmonised with the retention of successive folios each containing an equal quantity of matter. This *a priori* argument is fully borne out when the several editions are compared in detail. It cannot, indeed, be said that they do not differ, but the differences are such as would naturally occur in any reprints of abbreviated French made at long intervals of time. In no two of the editions do the contractions quite agree. In some instances an obvious mistake in an earlier edition has been corrected in a later; more often, a mistake occurs in a later edition from which its predecessors are free.

In the edition of 1679 especially there is evidence of an attempt to improve the spelling, which shows a complete want of knowledge of the characteristics of the contemporary MSS. This is conspicuously marked by the introduction of the apostrophe, which was quite

The spelling of the edition of 1679 least in harmony with the MSS.

unknown to the scribes who wrote and copied reports in the reign of Edward III. Thus loriginal becomes l'original, sil becomes s'il, nest n'est, dun d'un, and so on, in imitation of the more recent French writers. This innovation is, of course, not an aid to the study of philology, but exactly the reverse, and only obscures the history of the *Langue d' Oil* in England instead of illustrating it. When, too, we find del and al printed del' and al', as if there must necessarily have been a vowel dropped after them, we see only the destruction of a link between old French and Italian, and an obstacle to the study of the Romance languages.

The text of the present volume being founded on original MSS. and records, the errors of the old editions are not noticed except in certain exceptional cases.

To set forth in notes all the minute details in which each of the earlier editions differs from each of the others would obviously be a most profitless task, as it could not serve to improve the text, and would amount to little more than a catalogue of mis-readings and mis-spellings. Still less could there be any use in showing upon each occasion how one or all of the preceding editions may differ from the MSS. upon which the text of the present edition is founded. A text based upon the collation of four or five MSS., and corrected with the assistance of the records, must stand or fall by its own merits, and the points in which the earlier printed texts differ from it ought in all cases to be clerical errors or misprints.

It should, however, be noticed that in the old editions there are some forms of reports which are not found in any MSS. now known to be in existence. Some of these occur at the end of Hilary Term, some at the end of Easter Term. When closely examined they are found to be reports in another form of cases reported on a previous folio in the same Term, with the exception of No. 58 of Hilary Term, which appears to be a report in another form of the first case in Easter Term. In relation to these a few of the variations found in the old editions have been mentioned in the foot-notes, but, even when dealing with these, I have always had a text of another report

established by contemporary MSS. for comparison, and in most cases the still more valuable aid of the corresponding record. In the foot-notes the expression "old editions" means all editions before the present, the expression "earliest editions" means all or most of the editions before 1679. In some instances a reading mentioned as that of "Rastell" will be found also in others of the earliest editions, when it has not been thought of sufficient importance to specify them in particular.

If the marginal notes of the present volume are compared with those of the earlier editions it will be seen that there are considerable differences. The editions of 1619 and 1679 purport, on their title pages, to be corrected, and amended, with notes and references to Fitzherbert's *Abridgment*. As a matter of fact there are some references to this *Abridgment* even in the earliest edition attributed to Rastell, and the editors or printers of the 1619 edition could not justly claim any merit of novelty on this ground, much less those of the edition of 1679. It is a laborious task to compare every case in the *Abridgment* with the reports, and one which can be thoroughly performed only by going through the whole of the *Abridgment*, and making notes of every case attributed to every Term under consideration. This I have done for the entire period of the reports edited by me, from Michaelmas Term 12 Edward III. to the end of the year 16 Edward III. I have continued to follow the same system rather than trust to the old references, and the result has been a considerable increase in the number of cases identified.

In the old editions there are no references in the margin to the *Liber Assisarum*. In this as in the previous volumes of the Rolls Series edited by me every case in the *Liber Assisarum* of the period has been noted in the margin.

In the old editions the marginal descriptions of the

Side-notes
in the
present
and pre-
ceding
editions :
References
to Fitz-
herbert's
*Abridg-
ment* and
the *Liber
Assisarum*

cases are most meagre, and rarely extend beyond the bare name of the action. In the present volume the contemporary side-notes (mostly from the Additional MS. 25,184) have been inserted.

On the other hand, something may be missed in the margin of this volume which occurs in the margin of the 1679 edition, but nothing, I trust, of any importance, the omission of which is not made good in another way. The expression "Op. Curiae" not unfrequently occurs in the edition of 1679. It serves as a kind of pointer to some remark, opinion, or decision of the Court. In none of the old editions is there any distinction of type to show the difference between the names of Judges and the names of Counsel. In the Rolls edition the names of Judges are always printed in capitals, and the names of Counsel in italics; and this appears, for most purposes, a much more ready way of indicating what is said with the authority of the Court or any of its Judges. It is, at any rate, more complete, for "Op. Curiae" is often missing from the 1679 margin, where in the text the Judges are deciding a point or giving a judgment.

A few other matters occur in the margin, chiefly of the 1679 edition, apparently rather by chance than in accordance with any definite principle. There will be found here and there a stray reference to Fitzherbert's *Natura Brevium*, to Littleton, or to some reports of later date, but there is no sign of any attempt to bring together all the learning bearing on all the points mentioned in the cases. Similar notes made in later hands by some of their possessors occur also upon the contemporary MSS., and in copies of the earlier editions, but they are no part of the reports, and it would be misleading to insert them as having any contemporary authority. On the other hand the contemporary side-notes from the Additional MS. No. 25,184, which are printed in the present edition, give a considerable number of references to the previous decisions of the reign.

About the middle of every page of the 1679 edition there is printed in the margin the letter [B] with a corresponding [B] in the text. This only means that in all the editions earlier than that of 1679 the back of a folio begins. A reference to any edition by folio is thus made a reference to them all. In Rastell, Tothill, and the edition of 1619, for instance Hilary Term in the 17th year of Edward III. begins on fo. 1, and the third case in the term begins on fo. 1, b. They are both on page 1 of the 1679 edition, but the third case begins half-way down at the place marked [B].

Mode of
reference
to the
folios of
the old
editions.

It was at one time thought that there might be some advantage in noting these folios in the margin of the present edition, but two strong reasons prevailed on the other side. In the first place it was found that, if the numbers were inserted among the longer marginal descriptions of the cases, they would cause inconvenience and confusion. In the second place it was found that the numbers of the old folios would not run consecutively where detached portions of cases previously printed as separate reports had been brought together.

It is, however, of undoubted importance that there should be some ready way of finding in the Rolls edition any case or portion of a case to which references may have been made when the mode of reference was by folios of the old editions. A table has therefore been prepared giving the folios of the old editions in the first column. The second column ordinarily shows the page of the present edition on which the commencement of a folio (front and back) is to be found, and, in cases in which the sequence of the matter in the folios has been interrupted, the pages on which the several parts of the folios have been introduced. It is hoped that this will serve all practical purposes, and will be quite as easy to consult as numbers occurring at long intervals in the margin.

A specimen of the text of 1679 side by side with that of 1901.

It was remarked in the Introduction to the Second Part of the Year Books of 16 Edward III. that the publication of the 17th and 18th years in the Rolls Series might "put fairly to the test the expediency of re-editing, according to modern methods, those Year Books which have already been printed."¹ As an aid to forming an opinion on that question, it has occurred to me that there might be some advantage in printing side by side the text of some short report as appearing in the latest of the old editions, and the text of the present edition. No. 30 of Easter Term has been treated in this way, not because it is worse than many others printed in the old editions, but because it contains a number of typical errors in a comparatively small space, and because it is one of the shortest cases that could have been selected among those which present features of interest.

In the present edition alone the French words are printed in full after the ascertained fashion, or rather fashions, of the period. The names, however, of Judges and Counsel, though set forth *in extenso* in the translation, on the authority of the rolls, are, in order to save space, printed in the abbreviated form in the French text, when they so appear in the MSS. of Year Books. The text of the present edition can thus, perhaps, the more readily be compared with that of the earlier editions. In this, though not in the earlier editions, as already explained, the names of the Judges are printed in small capitals, while those of Counsel are in italics. In the foot-notes to this edition the names of parties, persons, and places, are given from the records when, as is commonly the case, they are given incorrectly, or not given at all, in the reports. There are no foot-notes and no translation in the old editions, and they cannot there-

¹ p. xl.

fore in those respects be compared with the present. As, however, the correctness of the translation is largely dependent on the correctness of the text, and the mode in which the new text has been established can be seen in the foot-notes, it is obvious that a comparison of the new text with the old will aid in proving whether there is any advantage in the new method as compared with the old method or absence of method. The references to the records in the foot-notes will also show some of the errors which occur even in the contemporary MSS. of the reports. The Abbot of Grimsby has, for instance, in this particular case been described as Prior in all the MSS., but attention has been called to the fact in one of the notes. The two parallel texts are printed on the two pages next following (xxvi and xxvii), the translation of the new text, and the notes, on pages 412-417 below.

Edition of 1679.

80.
Intrusion.

Le Prior de Seint Aug. de Grimesby port b̄r de Intrusiō V̄s B. de leas fait p W. sō p̄deč, en les q̄ux il n'ad ent̄r si nō puis le leas ꝥc.

¶ *Ric.* Il ne poit riē d̄der car W. sō p̄deč de l'assēt sō covēt p ceo fait granta ꝥ dona a un A. les teñts, a av̄ ꝥ tener a luy ꝥ son primer fits engender ou sa prim̄ file, et oblige luy ꝥ ses success. a gar̄r a A. ꝥ son prim̄ fits ꝥ file *ut supra*, ꝥ vous dio⁹ que nous sumus fits eisne A. issint estes vous a gar̄r a nous. Jugement.

¶ *Momb. ad idem.* Il ne use pas ceo fait celuy que immediate prist estate per le doñ, ne per voy de reñm apres le deceas A. issint non certain. Jug. ¶ *Ric.* de puis que vous ne dedits p̄ ceo fait. Jug. ꝥc. ¶ *Hill.* Il use le fait solonq3 sa mat̄f. ¶ *Momb.* Per le fait le quel il plede in barre est sup̄p̄ le done estre fait a luy ꝥ son prim̄ fits ou fil', *ut sup̄*, ꝥ vous diomus q̄ B. qu'ore plede in barre ne fuit p̄ adonq3 *in rerum nat'*, issint q̄ ceo fait q̄ sup̄p̄ done al' fits A. fuit void in le fits. Jug3, si per ceo fait nous puisses barre. *Et sic ad judic̄.* ¶ *Th.* pria que ses challeng. fuissent entres. ¶ *Hill.* Si seront. Puis *Momb.* de p̄cel' vouch. ꝥ del' remnant trav̄sa le leas. *Quære*, si ceo b̄r de divers actions & divers natures y gist.

Present Edition.

(30.) Le Priour de Seynt Augustyn de Grymesby ^{Intrusion.}
 porta bref Dentrusioun vers B. dun lees fait par ^{Et credo}
 W. soun predecessour a un A., a sa vie, en les ^{que ore}
 queux il nad entre si noun par abatement apres la ^{fet ne put}
 mort, &c.—*Richem.* Il ne poet rien demander, ^{mye valer}
 qar W. soun predecessour, del assent soun Covent, ^{a cely que}
 par ceo fait, graunta et dona a un A. les tenements, ^{ne fut mye}
 a aver et a tener a luy et a soun primer fitz a ^{en vie a}
 engendrer, ou sa primere fille, et obligea luy et ses ^{temps de}
 successours a garrantir a A. et a soun primer fitz ^{la con-}
 ou fille, *ut supra*, et vous dioms que nous sumes ^{feccion du}
 fitz eigne A., issint estes vous tenuz a garrantir a ^{fet, qar par}
 nous; jugement.—*Moubray.* Vous veiez bien ^{tant nest}
 coment il se fait pas prive a ceo fait; jugement ^{mie partie}
 si a ceo fait use par luy ley nous mette a re- ^{al pur-}
 spoundre.—*Thorpe, ad idem.* Il ne use pas ceo ^{chace.}
 fait come celuy que immediate prist estat par le ^{[Fitz.,}
 doun, ne par voie de remeindre apres le decees ^{Effements}
 A., issint en noun certain; jugement.—*Richem.* ^{et Faits,}
 De puis que vous ne deditez pas ceo fait, juge- ^{60.]}
 ment, &c.—*HILL.* Il use le fait solonc sa matere.
 —*Moubray,* Par le fait quel il plede en barre
 est suppose le doun estre fait a luy et a son
 primer fitz ou fille, *ut supra*, et vous dioms que
 B., qore plede en barre, ne fut pas adonques
in rerum natura, issint que ceo fait que suppose
 doun al fitz A. fut voide en le fitz; jugement
 si par ceo fait nous puisse barrer.—*Et sic ad*
judicium.

The effect
and impor-
tance of
the differ-
ences
explained.

It will be seen that the edition of 1679 is not only without the contemporary marginal note found in one of the manuscripts, but has no reference to Fitzherbert's *Abridgment*, the references to which are made a prominent feature in its title-page. The deed mentioned in the report, to which Fitzherbert called attention under "*Feffements et Faits*," was certainly one of so curious a nature that it deserved a search under that head; but those who were responsible for the edition of 1679 left the references to Fitzherbert just where they were in the edition attributed to Rastell.

When we come to the text we find that the very first sentence is practically meaningless. It was of the essence of an action of Intrusion that it was grounded on a wrongful entry after the death of a tenant for life. The all important fact that the lease had been made for life is omitted, though it appears in two out of three MSS. Again the writ is made to be to the effect that the tenant had not entry but after the lease, whereas it was part of a necessary form that the entry should be alleged to be by intrusion or abatement after the death. So it was alleged in two out of three MSS. and in the record cited in the present edition. When in the plea Counsel alleges that the demandant is bound or holden to warrant, the word "tenu" or "tenuz" is omitted from the edition of 1679, though not from all of its predecessors; the word occurs in all the known MSS., and is represented by the Latin equivalent in the record. The words of Moubray, one of the Counsel for the demandant, which follow the plea, are entirely omitted from all the old editions, and the words of Thorpe are put into his mouth instead. Moubray, moreover, (printed *Momb.*) is made to speak *ad idem* (that is to say) with reference to some special point mentioned in the last preceding speech. He was, on the contrary, raising an objection to the tenant's plea in bar. It was Thorpe who spoke *ad idem*, following, and on the same side as, Moubray. In the words

attributed to Moubray, instead of to Thorpe, the word "come" is omitted before "celuy" in the edition of 1679 (though not in all of its predecessors)¹, and the sentence is thus rendered either unintelligible or open to a wrong interpretation.

The conclusion of the report after the word *judicium* both in the edition of 1679 and in its predecessors has nothing whatever to do with the case, but belongs to a previous case, No. 27. It does indeed occur at the end of No. 30 in one of the MSS., but the mistake is corrected in the MS. itself by a marginal note showing that the words are "*Residuum de bref dentre*," and by a reference to the proper place for its insertion. This is, of course, a double blunder in the old editions, not only giving to No. 30 a wrong and meaningless ending, but depriving No. 27 of the ending which really belongs to it. It may even be described as a threefold blunder because the real conclusion of case No. 30 actually occurs in a subsequent term in the MSS.

It can hardly be necessary to say more as to any supposed collation of MSS. by the editors, printers, or publishers of the old editions, or as to the general value of the alleged corrections in the edition of 1679. One can but feel compassion for those generations of lawyers who lived after the art of printing had been applied to the Year Books, and who had to struggle as best they might, not only with the inherent difficulties of any of the cases, but also with the added difficulties and impossibilities introduced by the printers.

Of the MSS. used to settle the text three have already been described in previous volumes, viz., the Lincoln's Inn MS., the Harleian MS., and the Additional MS. in the British Museum numbered 25,184. The five MSS. used for the text of the present edition.

¹ It was first omitted in the edition of 1619.

Two others have also been collated, though neither of them extends over the three terms included in the present volume. One of these is the Additional MS. in the British Museum numbered 22,552, the other the MS. in the University Library at Cambridge numbered Hh. II. 4, or 1682. As before, the Lincoln's Inn MS. is indicated by the letter L., and the Harleian by Harl. The Cambridge MS. is indicated by the letter C. It might, perhaps, have been better from some points of view, and it would certainly have been less cumbersome, to indicate the Additional MSS. in the British Museum by letters rather than by their numbers in full, though there are those who think that the latter course is not without its advantages. As, however, No. 25,184 ends with the 18th year of the reign, and No. 22,552 contains nothing between the 17th and 21st years, the question is one which *solvitur ambulando*. For the sake of uniformity, therefore, I have ventured to repeat the numbers as before.

The "Additional"
MS. No.
22,552.

The Additional MS. in the British Museum 22,552 (Plut. ccccxlv., 1) contains (with other matters, including a *Natura Brevium*, and some notes) Year Books of several years, most of which are in a hand approximately contemporaneous. At fo. 55 begins Hilary Term of the seventh year of Edward III. This is followed by Easter Term of the same year, which ends upon a small strip of vellum numbered 70. Fo. 71 is blank, and upon fo. 72 begins Michaelmas Term of the eleventh year, which appears to be complete. Hilary Term in the twelfth year commences on fo. 81*b*, and ends on fo. 83*b*, where also Easter Term of the same year begins. Fo. 84 is blank. At fo. 85 (much injured by damp, and partly illegible) there is a portion (the beginning being lost) of Hilary Term 17 Edward III. which ends on fo. 90*b*, where Easter Term of the same year begins. This, however, ends abruptly on fo. 94*b*, case No. 26 being here followed by the continuation of the case No. 31 of Easter Term, which in other MSS. is placed in Trinity Term, and which

is here left incomplete. Fo. 95 is blank, and on fo. 96 begins Hilary Term 21 Edward III., which is succeeded by Easter, Trinity, and Michaelmas Terms of the same year, ending on fo. 123. Fo. 124 is blank.

On fo. 125 appears the heading "*Assise anno regni Regis Edwardi Tertii xx.*," and "*Assise*" are continued through successive years as far as the year 29 Edward III. On fo. 179 there is a heading for *Assise* of the thirtieth year of the reign, but nothing under it. The contents of this part of the volume appear to be in a somewhat later hand than that in which the matter immediately preceding is written. These *Assise* are contained in the printed *Liber Assisarum*.

On fo. 180 begin reports of Hilary Term 38 Edward III., and there are successive terms of that year ending with Michaelmas on fo. 201*b*. The handwriting is much like that of the Assises.

On fo. 202 begins Hilary Term 40 Edward III. in a handwriting which is about contemporary, and the reports are continued to the end of Michaelmas Term in that year on fo. 223*b*.

For the purposes of the present volume the MS. has not proved very useful, as both Hilary and Easter Terms are incomplete in it, the margins are defective throughout both, and the writing is in many places defaced. The omissions of sentences or parts of sentences, through the carelessness of the scribe, are also numerous. Notwithstanding its defects, however, it has occasionally been of service in affording confirmation of doubtful readings, and in supplying a few missing words.

The MS. in the University Library at Cambridge has been to some extent described in the Introduction to Year Books, Michaelmas 13—Hilary 14 Edward III. (pp. xxi-xxiv), but only so far as to show that it does not contain any reports of the years 12-16 Edward III. as was at one time supposed. The volume consists of several MSS. or portions of MSS.

MS. in the
Cambridge
University
Library.

of various dates bound together. Of the year 17 Edward III. it contains only a fragment of Easter Term (beginning, about the middle of case No. 31, with the words "mes vous veez bien [coment] ils ne dedient pas la composicion fet entre les parceners"), the whole of Trinity Term, and a part of Michaelmas Term, which ends abruptly just after the middle of case No. 37. The reports at the end of Easter Term which are wanting in the other MSS. are wanting also in this.

It is not by any means the best of the MSS. which have been collated for the present edition. The hand-writing is cramped, and the reports of Trinity Term occupy in it no more than $7\frac{1}{2}$ pages, while in the Additional MS. 25,184 they occupy $9\frac{1}{2}$ pages, and in the Harleian $8\frac{1}{2}$ pages. Its errors and omissions are more than usually numerous, and in several instances there is nothing to mark the end of one case and the beginning of another. The report No. 40 is brought to an abrupt conclusion with the word "vers" in the middle of a line, and the words "Le baillif daver icy lorginal," with which it should end, are made the beginning of the report No. 41 at the beginning of a new line. The MS. has, nevertheless, been of use, because no MS. of the Year Books is ever found to be absolutely perfect, and the least well written of them may sometimes supply a missing word.

The volume does not appear to contain any reports of the year 18 Edward III., but does appear to contain some of the 19th year, which are followed by reports of the 23rd year. It will probably be necessary to give some further description of it on another occasion, after more minute examination.

In the mean time I cannot dismiss the subject without expressing my thanks to Mr. Jenkinson, the Librarian of the University, for his courtesy and the ready assistance which he lent in deter-

mining the beginnings and endings of the different fragments by comparison with the printed Year Books.

There once was, and still possibly may be, in existence, another MS. which I should have been glad to collate had I been able to obtain access to it. This is the MS. described in the Third Report of the Historical MSS. Commission (Appendix pp. 267-8) which formed part of the collection belonging to Mr. Philip Henry Warburton, of Assheton Grange, Cheshire, and Broad Oak, in the county of Flint. It appears to have come into the possession of Mr. H. Lee, of Redbrook House, Whitechurch, Salop, and to have been in his collection of documents in the year 1871. I am informed, however, by Mr. Lee's son, Mr. J. H. Warburton Lee, that he has no Year Books of the reign of Edward III., and that the volume described in the Report is no longer among the "Warburton Papers," and cannot now be found. The loss of so valuable a MS. is much to be regretted.

Disappearance
of the
Warburton MS.

Among the reports in the present volume there are some which are in continuation of cases partly reported in previous years. As there were no Year Books between the 10th and 17th years of the reign of Edward III. printed before the publication of the Rolls edition, it follows that, so far as these cases are concerned, the lawyers of a previous age had only fragments of reports to study in the old editions. The case No. 39 of Hilary Term 17 Edward III., for instance, is a continuation of case No. 88 of the previous Michaelmas Term, but no one could have discovered the fact by the aid of the old editions; and only in the margin of one of the MSS. is it stated where the commencement is to be found. In Easter Term where there are two reports of the same case No. 22 (Nos. 22 and 43 in the old editions) there is nothing in the old

Cases in
the
present
volume:
continua-
tions of
earlier
reports.

editions to show that the first is a continuation of case No. 49 of Michaelmas Term 15 Edward III., and although there is a reference to that Term in the second report there is nothing to show that the two reports are merely independent reports of the same case. The case No. 12 of Trinity Term 17 Edward III. is a continuation of No. 41 of Michaelmas Term 16 Edward III., and is, indeed, quite unintelligible without the commencement, and, it may be added, without the corresponding record.

Various cases illustrating the life of the period.

Apart from these continuations the reports range over a very wide field. We see in an action of Waste,¹ the question hotly argued (though without any decision on the point) whether tenant for life of a coal and iron mine leased by deed "*cum omnibus commoditatibus, libertatibus, et eysiammentis*," had the right to dig coal and iron-ore for sale, or only to take necessities for his own use. We see the owner of a messuage in Southwark complaining of a nuisance² caused by her neighbours, who had befouled her fish-ponds by erecting a house of office over the trench which connected them with the Thames, and rendered her dwelling uninhabitable. We see how a clerk convict, after having been delivered to the Ordinary, escaped from prison, and killed two men.³

The Council and the King's Bench: an Appeal.

One case⁴ affords an insight into matters as widely different as the relations of the King's Council to the Court of King's Bench, and the kind of jewelled cup which belonged to the King's Consort, Queen Philippa. According to the record one Thomas de Eboraco (or of York) appeared, in the King's full Council, at Westminster, before the Chancellor, the Chief Justice of the King's Bench and others, desiring to appeal Thomas de Estryngton, of York, mercer, of robbery, and found sureties to prosecute his appeal.

¹ Hilary No. 21, p. 100.

² Hilary No. 31, p. 148.

³ Hilary No. 47, p. 210.

⁴ Hilary No. 48, p. 218, and Appendix A.

Estryngton was then brought into the Court of King's Bench, in custody of the Marshal. Thomas of York thereupon stated his Appeal to the effect that, on a particular night, and at a particular place in York, Estryngton, together with others named, whom he would appeal if they were present, robbed him of a mother-of-pearl cup, silvered and gilt, and set with twenty-seven garnets and twenty-seven sapphires, and of the value of £20 (probably about £300 or £400 of our modern money). He said that they robbed him also of £20 in coin, 80 florins worth three shillings and four pence each, and sixty florins worth four shillings each, as well as plate, utensils, and goods to the value of £40, and afterwards by conspiracy compelled him to abjure the city of York, so that he did not dare to go there, or to prosecute his right against them according to the law and custom of the realm, for fear of death. Hence presumably his appearance before the King's Council.

The cup was then brought into the Court of King's Bench from the King's Treasury for inspection, but in what manner it found its way back into the Treasury there is nothing to show, though it was probably sent by the persons whom Thomas of York accused of the robbery, and who are described in the report as the Bailiffs of York. Testimony was, however, given on the King's behalf that it belonged to Queen Philippa, and had been stolen from the Treasury.

Upon this, Thomas of York "*statim allocutus est qualiter se velit acquietare.*" It appears from the report that exception was taken to this summary mode of arraignment, without writ or indictment. Scot, C. J., however, said that the Justices of the King's Bench "are Sovereign Coroners of the Realm, wherefore, since Sheriffs and Coroners can admit Appeals without writ, *a fortiori* the Justices can do so," and added that there were precedents. Thomas thereupon pleaded "Not Guilty" and put himself

upon the country. A jury was summoned for the Quinzaine of Easter, and Thomas of York was committed to the custody of the Marshal.

In the end the persons whom Thomas of York had appealed were severally found not guilty by a jury, and he, after having been brought into Court to prosecute his Appeal, was recommitted to the custody of the Marshal for his false accusation. At last however it appears in the record that he paid a fine to the King in Michaelmas Term, and so the matter ended.

Form of
Wager of
Battle in
Appeals.

In this case there was no wager of battle, but had there been one, as there not unfrequently was in cases of Appeal, it would have been according to a form which appears in the present volume.¹ The whole of the details are given up to the time at which the combatants are "girded for battle."

Proceed-
ings in a
Court of
Ancient
Demesne.

One case relating to a Court of Ancient Demesne (No. 40 of Trinity Term) has not only been reproduced in Fitzherbert's *Abridgment*² (of which fact the editors of the old editions were not aware) and noticed in Brooke's *Abridgment*,³ but was also the subject of remark in Fitzherbert's *New Natura Brevium*,⁴ and in Coke's *Institutes*;⁵ and the writ which brought it into the Court of Common Pleas is the precedent given in the Register of Original Writs.⁶ The report is very brief, but the whole matter is made perfectly clear by the record, which has been found, and has been printed in the Appendix.⁷

A writ of *Recordari facias loquelam* issued to the Sheriff of Berkshire directing him to go to the Court of East Hendred, belonging to the Prioress of Littlemore, and there record the proceedings in that Court on a Little Writ of Right brought by John

¹ Hilary No. 6, p. 20.

² *Cause de remover ple*, 15.

³ *Cause a remover ple*, 35.

⁴ Edition of 1755, p. 28.

⁵ 4 Inst., 270.

⁶ *Registrum Brevium Originalium* (1531) fo. 11, b.

⁷ Appendix B., p. 617.

Bassat, demandant, against Walter Bassat, tenant, in respect of a messuage and a virgate of land in East Hendred. He was to return this, together with another writ, on a certain day, because the demandant had made protestation that he wished to prosecute his writ in the form of an Assise of Mort d'Ancestor, and the parties had pleaded to the taking of the Assise, and because, as was alleged, there were only four suitors within the "dominium" of the Court. The writ was, however to be executed only if the facts were as stated, and if the demandant desired it.

The "other writ" which the Sheriff was to return was the original Little Writ of Right directed to the Bailiff of the Court, as to which the Sheriff returned that he could not send it because the Bailiff refused to deliver it. He did, however, return the record, under his own seal and the seals of four men of the court who were present at the making of it, and the whole of the proceedings are consequently on the roll of the Common Bench as follows.

The demandant brought his Little Writ of Right Close, found pledges for prosecuting it, and protested that he would prosecute it in the form of a writ of Assise of Mort d'Ancestor. The writ is then recited, though the Bailiff had retained possession of the document itself, and two suitors of the court were directed to summon the tenant, according to the custom of the manor, to appear at the next sitting of the court.

Protesta-
tion to
prosecute
therein a
Little
Writ of
Right in
the form
of a Mort
d'Ances-
tor.

It was the custom of the manor for the tenant to cast three successive essoins at three successive holdings of the court before appearing, and the tenant in this case availed himself of the privilege. After this, the demandant "proffered himself" against the tenant in respect of a plea of Mort d'Ancestor, according to the custom of the manor, and prayed that it might be made known by an Inquest in place of an Assise of Mort d'Ancestor, according to the custom of the manor, whether the demandant's father

was seised of the tenements in his demesne as of fee on the day of his death, and whether the demandant was the next heir according to the custom of the manor.

Pleadings
thereon.

This mode of giving a demandant in a Court of Ancient Demesne the advantages of an action of Assise, though bringing a writ of Right, was, if generally recognised, at any rate not familiar to the suitors of the particular court. The tenant pleaded in abatement of this *demonstratio*, on the ground that on a writ of Right the demandant ought to count of his ancestor's right, and from that to deduce his own right, or in other words that he could not bring an action ostensibly to try the right, and make use of a form properly belonging to a merely possessory action. The demandant, on the other hand, maintained that in consequence of the protestation as to prosecuting the writ in the form of an Assise of Mort d'Ancestor the *demonstratio* and the demand contained in a writ of Mort d'Ancestor did naturally lie according to the custom, and not any count as to the descent of the right. Issue was joined upon this point, both parties abiding the judgment of the suitors of the court.

After two adjournments, the suitors being charged by the bailiffs of the court to give judgment, said that they were not yet advised, and there was a further adjournment. In the end, however, they said that, on the protestation which had been made, the *demonstratio* which is contained in an original writ of Mort d'Ancestor did lie, and not a count as on a writ of Right, and they gave judgment that the tenant must answer.

The tenant, nevertheless, still maintained that, according to the custom of the manor, he was not bound to answer to the protestation, because in that court no protestation had ever before been made upon a Little Writ of Right Close, nor was there ever a custom in that court to make that

protestation, but on the contrary to prosecute the writ according to its own nature. The demandant, however, said that, from the time at which the Little Writ of Right had been granted and ordained, it had always been the custom for the demandant to make protestation as to the form under which he wished to prosecute his action, and that the custom still continued in every Court of Ancient Demesne. Issue was again joined on this point, the parties again abiding the judgment of the suitors of the court.

There was again an adjournment, and on the appointed day the tenant was essoined. Another adjournment followed, and the tenant again sent an essoiner to excuse him. The demandant, however, objected that no second essoin lay in the circumstances, and the tenant, by his essoiner, thereupon alleged that every tenant could after every appearance be essoined three times on the Little Writ of Right, no matter what might have been the protestation on it. The tenant seems here to have admitted the possibility of the protestation which he had previously denied. The demandant said to this that, according to the custom, a tenant might be essoined three times before appearance, but only once afterwards. Issue was again joined, the parties abiding the judgment of the suitors of the Court.

The suitors said that the tenant in such a writ, whatever the nature of the protestation, could have only one essoin, and therefore gave judgment that the second essoin was null, and must be considered a default. The Assise was therefore to be taken by default according to the custom of the manor.

The Assise was, however, respited for want of jurors, because there were only four suitors in the Court exclusive of the parties. Then came the writ of *Recordari facias loquelam* for removal of the cause, and the appointment of a day in the Court of Common Pleas.

Removal
into the
Common
Bench for
want of a
sufficient
number of
suitors to
make an

Assise in
Mort d'
Ancestor.

It is stated in the report, that the tenant made default on the day given. In the roll, however, it only appears that because the Bailiff of the Prioress's Court had refused to deliver the first writ of Right to the Sheriff, he was to be distrained to deliver it, and that the Sheriff was to have it in the Court of Common Pleas at the Quinzaine of Michaelmas, when the parties were to proceed further as the Court might adjudge.

As it was a part of the form of a writ of Assise of Mort d'Ancestor that there were to be twelve recognitors or jurors, and there were only four suitors of the Prioress's Court over and above the demandant and the tenant, it would be interesting to know how the difficulty was overcome. On that point, however, neither the report nor the record gives any information.

Equity
and Com-
mon Law;
*Audita
Querela.*

In a case in Easter Term¹ we find Equity clearly distinguished from Common Law by name.² There arose a question whether the writ of *Audita Querela* lay for one who had been enfeoffed by an obligor in a statute merchant, when execution had not actually been effected in his lands. It was the usual remedy for the obligor himself when execution was had against him after he had made satisfaction to the obligee, or when he had a release from the obligee, or a defeasance of which the conditions had been fulfilled. In this case, however, a doubt was expressed by Stonore, the Chief Justice of the Common Bench, whether it was applicable to any one but "the first," meaning apparently the obligor himself. "I tell you plainly," he said, "that *Audita Querela* is given rather by Equity than by Common Law, for quite recently there was no such suit." According to another report, Counsel for the feoffee attempted to use this point in his own favour, because he could not have recovery by Common Law.³

¹ No. 24.

² p. 370.

³ p. 386.

In later times it was fully recognised that an *Audita Querela* was of the nature of a suit in Equity,¹ but Stonore was probably the first who was reported to have called attention to the fact. The subject was one with which he was evidently familiar, as we find him a few years earlier hesitating as to whether an averment should be allowed or not, because on the one hand to admit it would be in accordance with "good conscience and the law of God," but on the other hand not in accordance with "the law of the land."² The case, however, is of importance chiefly as showing that the earliest proceedings of the nature of proceedings in Equity were in the ordinary Courts of Common Law, and that the distinction was not, as in later times, between Courts of Common Law and Courts of Equity. It may be added that even when causes were heard in Chancery on Bill and *Sub-pœna* the proceedings at first partook of the nature of proceedings at Common Law, and concluded with a judgment and not a decree.³

The reports in the present volume include an unusually large proportion of cases relating to ecclesiastical affairs, and some of them are of considerable importance. Much space is occupied with the Assise of Darrein Presentment brought by Theobald de Greneville against John de Ralegh and Amy his wife, the proceedings in which are doubly reported in the first instance in the Court of Common Pleas,⁴ doubly reported again upon a writ

Large proportion of church matters in reports: appendancy of advowsons.

¹ Cro. Jac., 29. (*Oguel v. Randol* in the King's Bench). The words of Sergeant Tanfield were "It is not only a suit in law but in equity also." The whole Court agreed except Popham.

² Y.B., Mich. 18 Edw. III., No. 51, p. 96.

³ On this subject see further *Common Law and Conscience in the Ancient Court of Chancery*. 1 Law Quarterly Review, 443.

⁴ Hil., No. 12.

of Error in the King's Bench,¹ and reported as to incidental details in two outlying reports.² The questions raised were mostly of a technical character, and have not, perhaps, much interest from a modern point of view, though there is a noteworthy decision that, if an advowson be appendant to a manor, and an acre of meadow, parcel of that manor, be aliened together with the advowson, the advowson becomes appendant to the acre and no longer appendant to the manor.

Prebends
and Pre-
bendaries.

A point which, according to a statement made by Counsel, had never arisen before, occurred in relation to a writ of Entry brought by the Prior of Hexham, as Prebendary of a prebend in the church of St. Peter, York.³ The ground of his action was that the tenants had not entry into a manor but after a lease made by the Prior's predecessor, as Prior and Prebendary, without the Assent of the Archbishop of York, and of the Dean and Chapter of the church of St. Peter. Exception was taken to the writ because it was said that the Prior, holding to himself and his successors, held the prebend as in right of his Priory, that no alienation could be lawfully effected without the consent of his Convent, otherwise described as his own Chapter, and that it was not sufficient to mention the Chapter of York. It was, however, argued on the other side that a Prebendary holds in right of the Chapter of the Church of which he is Prebendary, and no other, and that just as any Prebendary, not being a Prior, could lease with the assent of the Chapter of York, so also could the Prior. This opinion seems to have prevailed, and the writ was accordingly held to be good.

A long and complicated action of *Quare impedit* begins in Easter and is concluded in Trinity Term.⁴

¹ Easter, No. 4.

² Easter, No. 4, *ad fin.*, p. 272
and Trin., No. 1, p. 468.

³ Easter, No. 27, p. 398.

⁴ Easter, No. 31; Trinity, No.
10.

It touches the right of the King to present to a prebend in the collegiate church of St. Edith, Tamworth. He claimed as having in his wardship the heir of one of several co-parceners whose turn it was to present. Counsel for the King, in his declaration, made a mistake by passing over one generation in tracing the descent. He was, however, allowed to amend it. In this, as in many other cases of *Quare impedit*, the statement of title affords much genealogical information, which, however, would be of little value without the corrections of the report which are supplied by the record.

Elsewhere we find that an action of *Quare impedit* Chantries could be brought in respect of a presentation to a chantry, and that a chantry was not necessarily donative.¹

Of somewhat greater importance, perhaps, are the fragments of the history of particular religious houses and churches, which appear in various recitals, especially where the record corresponding with the report is found. Thus in one action of Annuity² there are some curious details of financial arrangements affecting the Priory of the Trinity, London, the Priory of Our Lady of Southwark, and the Church of St. Mildred, London. In the record of one of the cases of *Quare impedit*,³ there is what practically amounts to a history of the church of Tenterden from the time of Canute, fortified by one of that King's charters, two Papal Bulls, and other documents. As, however, it was put forward on behalf of the Abbot of St. Augustine, Canterbury, who was the defendant in the cause, and the whole matter was referred for enquiry to the Archbishop of Canterbury, whose return to the writ sent to him does not appear on the roll, the information can only be taken for what it is worth as an *ex parte* statement.

¹ Hilary, No. 40, p. 196.

² Easter, No. 41, p. 460.

³ Trin., No. 11.

The
"Guardian of
the Spiritualities."

Among other questions relating to the Church arose one of great importance as to the Guardianship of the Spiritualities during the vacancy of an episcopal see. It arose, too, where there had been a dispute on the same point ninety years before, in relation to the vacant see of Lincoln. In 1253 the Chapter of Lincoln resisted the attempt of the Archbishop of Canterbury to arrogate to himself the office of Guardian. In 1343 the Archbishop of Canterbury attempted to evade the responsibilities attaching to the office.

Dispute
arising
on the
vacancy
of the See
of Lincoln
in 1253.

On the 14th of October, 1253, died Robert Grosseteste, Bishop of Lincoln, who had himself been engaged in a long conflict with the Chapter in relation to visitation and other matters.¹ He was buried at Lincoln, the burial service being performed by the Archbishop with several Bishops. The Archbishop "die Martis proximo præcedente ibidem in Capitulo visitationis officium exercuerat." Immediately after the funeral, he caused the Chapter to be convoked, and in the presence of the Canons, who denied his right, he announced his intention of retaining in his own hands the jurisdiction of the Bishopric, and pronounced sentence of excommunication against all who opposed him. Archdeacon William Lupus declared that he would appeal, and set off on his journey to Rome, but appears to have been put to some straits in order to avoid capture on the way.²

Composition
between the
Archbishop of
Canterbury and
the Dean and
Chapter of
Lincoln in
1261.

The Appeal to Rome was not an expeditious remedy, and we find that the Archbishop exercised the jurisdiction in all points, by means of his officials, during nearly half a year. Neither Lupus nor the Canons in general would acquiesce, but contended that the right of presentation, admission, and institution to churches, and the cognisance of all causes which belonged to the Bishop belonged to them during the

¹ See his letters printed in the
Rolls Series (Ed. Luard).

² *Annales Monastici* (Rolls Series),

Vol. III. (*Annales Prioratus de
Dunstaplia*. Ed. Luard), p. 187.

vacancy of the see. In the end both sides agreed to an arbitration, the Archbishop appointing Hugh Mortimer, Archdeacon of Canterbury, and the Canons, one of their own body, Robert de Marisco, as arbitrators (*judices*), who were to admit proofs on both sides, and do justice between the parties.¹

It is not stated by the chronicler that the arbitrators ever made any award, but it does appear from a case in the present volume that a composition was made in the reign of Henry III., and we know from another source that this was the result of the reference to arbitrators, though several years elapsed before the disputants came to an agreement.

It was not until the year 1261 that the parties ^{its terms.} finally accepted the award, and took their corporal oath to observe it. Then we are told that, having well considered how litigation causes lavish expenditure, is destructive of repose, and a vexation to the body, as well as a distraction to the mind, they had thought it good that the question which had long been under discussion in the Court of Rome, touching the episcopal jurisdiction and authority during the vacancy of the see of Lincoln, should be determined, through the mediation of good men, by an amicable composition. The terms were that whensoever, in future, it should happen that the see should become vacant by the death or resignation of the Bishop, or in any other way, the Dean and Chapter of Lincoln should, within two or three days, when the Chapter was certain of the vacancy, nominate three or four from among the Canons, and should by letter signify their names with all possible speed to the Archbishop when in the Province, or to his Official when the Archbishop was out of the Province. Out of these the Archbishop, or, if he was out of the Province, his Official, was to choose, establish, and appoint one as Official of Lincoln to exercise the

¹ *ib.*, p. 189.

episcopal jurisdiction in the city and diocese of Lincoln during the whole period of vacancy. The Official so appointed was to take his corporal oath to the Archbishop, or the Archbishop's Official, or the Deputy of either that he would lawfully and faithfully execute the office entrusted to him, and faithfully answer to the Archbishop as to the revenues and profits arising in relation to his jurisdiction or office, but the Archbishop was to provide him with what would be sufficient to meet all expenses. He was not maliciously or wrongfully to threaten any subjects of the city or diocese, whether clerks or laymen, whether religious or secular, or unjustly burden them either in property or person, or unduly trouble them, and was to abstain from all illegal oppressions and exactions. He was also to swear before the Dean, or the Dean's deputy, and the Chapter, that he would be faithful to the church of Lincoln, and conduct himself faithfully in the exercise of his jurisdiction.

If the Official thus appointed should die, or resign, during the vacancy of the see, or should be removed for any just cause, the Dean and Chapter were to nominate three or four from among the Canons, of whom one was to be appointed Official in the same manner as he had been.

A certain jurisdiction was reserved to the Dean in the city and suburb of the City of Lincoln, as well as over the Canons, and in relation to their prebends, and to other matters.¹

Right to
the
Guardian-
ship long
unsettled.

The commonly received doctrine is that, both in England and on the Continent, the Guardianship of the Spiritualities during the vacancy of a Bishopric rested with the Chapter down to the 12th century, but that in England the Archbishops of the respective provinces soon afterwards asserted a claim to it. It does not, however, appear that the Archbishop of Canterbury ever claimed to be Guardian of the

¹ Wilkins, *Concilia*, I. 756, from Cotton, Cleopatra, E. 1, fo. 195.

Spiritualities of the Archbishopric of York, or the Archbishop of York of the Spiritualities of the Archbishopric of Canterbury. Nor, as we have seen, does it appear that the Chapters were willing to give up their ancient jurisdiction even in the latter half of the thirteenth century. As we shall see from the case in the present volume, the question cannot even be said to have been definitely settled a century later than that.

When in Easter Term, 1343, the King brought his action of *Quare non admisit*¹ against the Archbishop of Canterbury as Guardian of the Spiritualities of the Bishopric of Lincoln, during vacancy, the question of the Archbishop's Guardianship was seriously contested —so seriously, indeed, that the best course was evidently thought to be to leave the point without any judicial decision.

Counsel for the Archbishop alleged that the writ did not lie against him as Guardian, and alleged a composition which is evidently that cited above, though there are differences in some minor details. A composition, he said, had been made between the Dean and Chapter and the Archbishop's predecessors to the effect that, upon a vacancy of the see, the Dean and Chapter should elect three of the Chapter and should present them to the Archbishop as Metropolitan and Supreme Head (*Sovereign*), and that the Archbishop should choose one of the three, who, during the vacancy, should perform all the duties of Ordinary, and have institution and induction. In this particular case he said that, in accordance with the composition, three of the Chapter, whom he named, had been elected, and one of them, also named, had been chosen by the Archbishop, and had executed the office, and so the Archbishop was not Guardian.

For the King, on the other hand, it was maintained that the Archbishop was, of common right, Guardian

The King's action against the Archbishop as Guardian in 1343.

The Archbishop pleads that he is not Guardian under the composition.

It is maintained, for the King,

¹ Easter, No. 9, p. 282.

that the
Arch-
bishop is
Guardian,
of com-
mon right.

of the Spiritualities, and the King's minister in that capacity, that it was not for the King to take notice of any composition between the Chapter and the Archbishop, and that he could send his commands to the person who, of common right, ought to execute them. Even if there had been such a composition made simply on the authority of the parties to it, he said, it could not, contrary to common right, discharge the Archbishop of his obligations to the King. Further, any one who might be elected and presented in the alleged manner would exercise his Office only as the Archbishop's Official, acting under the Archbishop's commission, and answerable in an action for the issues and profits due to the Archbishop. Thus the Archbishop was chief Guardian, and had not denied his contempt.

It is main-
tained, for
the Arch-
bishop,
that the
Dean and
Chapter
are Guar-
dians, of
common
right.

Counsel for the Archbishop, thereupon, flatly denied that the Archbishop was Guardian by common right. By common right and law, he said, the Dean and Chapter are Guardians, unless they be restrained by prescription or composition. The question who is Guardian by common right, moreover, he said, does not fall under the cognisance of the King's Court, and the King has only to send his writ in general terms "to the Guardian."

Further
pleadings.

For the King, on the other hand, it was maintained that common right must be understood to be in accordance with the most common usage, and that the Archbishops were the Guardians of the Spiritualities throughout the realm. As to sending the King's writ "to the Guardian" in general terms, that was the right course only when there was but a first writ executed without question. When, however, the King's commands were not executed, and suit had to be prosecuted for contempt, process had to be made against the Guardian by a definite name, and it was necessary for the King to know to whom to send his writs, because otherwise he would not know against whom to sue for the contempt. The Archbishop was

in fact the King's Officer, and Guardian, both by common right and in virtue of the composition.

Scot, the Chief Justice of the King's Bench, in which Court the action was brought, contented himself with asking for more precision in the pleadings. Parning, the Chancellor, said that when any one intermeddles with the execution of any office, the King looks to him, without having any regard to the question who ought of right to execute it.

Counsel for the King then said that the Archbishop had always had the jurisdiction, and that he believed it commenced by license from the King. The Archbishop, he said, was Guardian in the time of Richard I., and ever before, until the time of Henry III., when the composition was effected by reason of the want of a good Guardian, and it was not to be understood that by virtue of any composition made since the time of memory the Archbishop could be discharged of his duties towards the King.

We thus see two absolutely contradictory propositions upheld in the two opposing camps—the one that the Archbishop was Guardian before the time of memory, the other that the Guardianship was in the Chapter. The contention in which Counsel for the Archbishop persisted, that the Court of King's Bench could not try the question who was Guardian, there can be little doubt, had much weight. It was quite true, as he said (and Counsel for the King could not deny it) that the form of a writ to the Guardian of the Spiritualities was simply to the Guardian, and not to a particular person, persons, or body. It was true even in the case of a summons to attend Parliament, which contained the *Præmunientes* clause directing the Guardian to warn certain of the clergy to attend with himself.¹ Nothing could therefore be inferred from the form of the writ as to the persons entitled to exercise the guardianship, and the position must have been one of considerable embarrassment for

The action against the Archbishop abandoned and a fresh action brought against the new Bishop of Lincoln.

See Pike, Constitutional History of the House of Lords, 154-156.

the Court. There was probably only one way out, and that was followed. The cause was allowed to drag on until the vacancy in the Bishopric was filled. Proceedings against the Archbishop as Guardian were then stayed, and a new action was commenced against the new Bishop of Lincoln.

The King claims the patronage of the Deanery of York, while the temporalities of the Archbishopric are in his hand.

There is another case¹ in which it was alleged, and not denied, that the Chapter of York was Guardian of the Spiritualities² during the vacancy of the Archbishopric, and this was in relation to the patronage of the Deanery of York. An action of *Quare impedit* was brought by the King against the Archbishop. The King's title, as stated in his amended declaration, after exception had been taken to another declaration admitted to be insufficient, was as follows:—

William de Melton, a previous Archbishop, was seised of the advowson or patronage of the deanery as of fee, and in right of his Bishopric. Upon a vacancy of the deanery in his time, the Chapter elected William la Zouche as Dean, by his license, and notified the election to him, and he established and installed the Dean so elected. It was upon his death that the Archbishopric came into the King's hand. Thereupon the same William la Zouche was elected and created Archbishop of York in due form, thus causing a vacancy in the deanery, while the temporalities of the Archbishopric were in the King's hand, and therefore it was claimed that the King had a right to present.

The Archbishop disclaims the patronage.

The Archbishop in his plea, disclaimed the patronage of the deanery. The Dean, he said, was chosen by election of the Chapter, without license from the Archbishop, or any one else. When elected the Dean elect was presented by the Chapter to the Archbishop, who, as Ordinary, had the power to examine, accept, and confirm him, but, when that was done, the Chapter installed him as in their own right. The Archbishop, therefore, had no claim but as Ordinary.

¹ Trin. Term, No. 16, p. 524.

² p. 531, note 6.

The plea on behalf of the Chapter was to the same effect as that on behalf of the Archbishop, but with some additions. During a vacancy of the Archbishopric they alleged that, after their election of the Dean, they installed him without presentation to any one because, as they said, the Chapter was then Guardian of the Spiritualities. They denied that William la Zouche was elected Dean by license from Archbishop Melton, and that the Archbishop established and installed him; and they said that, after election without any such license, and after examination, acceptance, and confirmation by the Archbishop, he was installed by the Chapter as in their own right. They also alleged that other Deans, two of whom they named, had been admitted in the same way from time immemorial. On the present occasion, they said, they had, upon notification of the vacancy caused by the creation of la Zouche to be Archbishop, elected Master Thomas Sampson, and presented him to Archbishop la Zouche as Ordinary, who, however, would not examine, accept, or confirm the Dean elect, and against whom proceedings were in consequence pending.

To the Archbishop's plea the reply for the King was that the deanery, like every dignity or part of every cathedral church, was of the foundation of the King's ancestors, by whom it had been endowed with divers possessions for the support of hospitality, alms-giving, and other pious works, and that the King, as well by reason of such foundation, as of his own royal right, was Patron Paramount, and was recognised as having the patronage of the deanery as of other dignities. It was his duty to see that the hospitalities, alms, and divine services, to provide which the deanery had been founded, were not diminished or lost, having regard as well to the salvation of the souls of his ancestors as to the preservation of the rights of the Anglican Church, which he was bound by oath to preserve unharmed. Since, then, the Archbishop did not deny that the deanery was vacant while the temporalities

The Chapter claim the right of electing the Dean, without license from any one.

The claim of the King defined as that of Patron Paramount.

of the see were in the King's hand, and disclaimed the patronage, judgment was prayed for the King as against the Archbishop.

To the plea of the Chapter the reply for the King was in part to the same effect as the reply to the Archbishop's plea, and further that, as the Archbishop had renounced or disclaimed all right to the patronage, it was inherent in the King as Patron Paramount. Since, therefore, the King was shown to be the possessor of the patronage, as in his royal right, and the Chapter acknowledged the deanery to have been vacant while the temporalities of the Archbishopric were in his hand, and to be still vacant, nothing belonged to the Chapter except the right of electing and installing the Dean; and that ought not to stand in the way of the King's action or rights, because the patronage of the deanery could not rest with the Chapter by reason of anything which the Chapter had alleged, and so it was for the King to present, and judgment was prayed for him.

Judgment for the King as Patron Paramount of the deanery and all other dignities or parts of a cathedral church. In the judgment which followed the reasons were stated very nearly in the words of the pleadings on the King's behalf. It was expressly said that he was, in his right as King, the Patron Paramount, the "*Supremus Patronus*," the "Sovereign Patroun" of the deanery as well as of all other dignities or parts of the cathedral church, that, during the vacancy of the Archiepiscopal see, he had the immediate patronage of all such dignities, prebends, or parts whatsoever, and that for the reasons alleged neither the Archbishop nor the Chapter could exclude him from his presentation. Judgment was therefore given for him, and a writ awarded to admit his presentee.

The Chancellor rebukes the Archbishop for disclaiming the patronage. The report shows that during the trial many arguments were used, and many points suggested, which have no place upon the roll. The Chancellor was, as on many other occasions, sitting, with the Justices of the Common Pleas, in the Common Bench, to hear this cause. His remarks throw considerable light on

the current topics and some of the historical views of the time. He was apparently of opinion that the Archbishop of York ought not to have disclaimed the patronage of the deanery. The Archbishop of Canterbury, he said, (and the statement is quite in accordance with the character of Stratford, the then Archbishop) would not for any consideration (for £1,000, as he put it) disclaim the patronage of the Priory of Canterbury. The inference, of course, is that he regarded the Archbishop of York as standing to the Dean of York in the relation in which the Archbishop of Canterbury stood to the Prior of Canterbury. By the Priory of Canterbury he, no doubt, meant the Priory of Christ Church, Canterbury, the Prior of which with regular canons claimed the right, subject to the King's *cong   d'  lire*, of electing the Archbishop of Canterbury. They were the monastic Prior and Chapter of Canterbury, while in York the Dean and Chapter which elected the Archbishop were secular.

In relation to the claim of the Chapter to elect the Dean without any license from any one, their Counsel said that those who elect, and present the Dean elect, are naturally the patrons. "But," said the Chancellor, "that does not follow, for every Convent which shall elect Abbot or Prior is not patron, but they have a patron paramount of their Abbey or Priory."

Here also the Chancellor laid down the proposition that where there were secular canons in his time there had in former times commonly been monks, that the change of habit had effected no change in the patronage, and that the secular canons of his time were no more independent of a patron paramount than the monks had been of old. As the case had relation to the Dean and Chapter of York he must have intended his statement to be applicable to that see among others. This is not the view taken by some modern ecclesiastical historians, who would limit the

of the
deanery

His state-
ment that
where in
his time
there were
secular
canons
there had
commonly
been
monks in
earlier
times.

original monastic character of Cathedral churches in England, to, at the most, those actually founded by the first missionary Bishops after the invaders from Northern Europe had made themselves masters of a great part of Roman Britain.¹ In relation to the Cathedral Church of York itself but little is known of the actions or intentions of the first Archbishop Paulinus.

Whatever the original foundation, it would appear to be the fact that in many instances there was a change, possibly more changes than one, before the Norman Conquest. Thus it would seem that Benedictine monks were substituted for secular clergy at Winchester and Worcester through the influence of Archbishop Dunstan. It is even possible that the monastic may have prevailed over the secular organisation in other sees, only to give way to a secular organisation afterwards, and *vice versa*.² This, however, even if fully established, would hardly warrant a general statement that wherever there were secular canons there had previously been monks.

The
Canons of
York
appear to
have been
always
secular
after the
Conquest.

After Lanfranc had become Archbishop of Canterbury, there may have been attempts to establish, or, perhaps, it might with justice be said to re-establish monasticism in some Cathedral churches, but York does not appear to have been one in which the attempt was successful. Gerard, Archbishop of York,³ wrote to Lanfranc's successor, Anselm, about the year 1103, giving a description of the Canons of York, which shows that they were secular in more senses than one, and the cause of no small scandal. Eighty years afterwards, they were, if more moral, still, at any rate secular, as distinguished from monastic. The Dean was Hubert Walter, the nephew

¹ e.g., Stubbs, *Chronicles and Memorials of Richard I.* (Rolls Series), Vol. II. *Epistolæ Cantuarienses*, Introd., pp. xxi-xxii.

² First Report of Cathedral Com-

mission, 1854, p. v. *Anglia Sacra*. II., 352.

³ *Historians of the Church of York and its Archbishops*, Ed. Canon Raine (Rolls Series), Vol. III., pp. 23-25.

and chaplain of Glanvill, the Chief Justiciary. The Precentor, Hamo, was the only dignitary in constant residence.¹ The non-resident canons, it is hardly necessary to say, were not monks, and there is no evidence to show that the Chapter of York was ever of a monastic character after the time of the Conquest.

The Chancellor's view, however, may have been that as the first institution of Cathedral churches in England, after Britain had ceased to be a part of the Roman empire, was monastic (a proposition, however, which has not been universally admitted),² that must be considered the normal condition of a Cathedral church, whatever may have been the condition of those of later foundation. Gerard's letter to Anselm is not inconsistent with this doctrine, as he seems to have wished to bring the canons of York within some religious order, and to have had no doubt but that this course was in accordance with ecclesiastical precedent.

Apart from the question of secular or monastic establishment, the early method of appointing a Dean is involved in much obscurity. The best sources of information would obviously be the registers or other documents preserved by the Chapters. The Cathedral Commissioners in the years 1854 and 1855 sought here for information, but failed to obtain definite and consistent details of sufficiently early date. The see of Dorchester (in the county of Oxford) for instance, was transferred to Lincoln in 1085, but the Chapter possesses no writings of earlier date than that of the transfer, and nothing relating to its own original constitution.³ In a more general way, too, the Commissioners to consider the Established Church had already reported in the year 1836 that the establishments of the old foundation (before the time of Henry VIII.)

¹ See Hoveden Vol. IV. (Rolls Edn.) Ed. Stubbs, pp. xxxix-xliii.

² See Wharton, *Anglia Sacra*, Part II., p. 352, note.

³ First Report of Cathedral Commission, 1854, p. 253.

appeared "to be governed principally by the domestic enactments of the bodies themselves, and by customs the origin of which cannot always be discovered."¹

The contention of the Chapter of York that they had the power of electing a Dean without any license from any one, is, however, not without support from some other quarters. The earlier practice of the Cathedral Church of St. Paul, London, might, at any rate be adduced in illustration. There, it appears, the Chapter had to announce the vacancy of the deanery to the Bishop in writing. Without asking any license from him for the election of a Dean, the Canons were to meet for that purpose and elect one in due canonical form. The Dean elect was to be presented to the Bishop in order that he might confirm the election in the absence of any canonical impediment found after examination. Finally the Bishop, if present, would with the Canons who might also be present, conduct the Dean elect to the altar, solemnly singing the *Te Deum*. The new Dean was, however, to be installed by the Bishop or by some one acting on the Bishop's behalf.²

Later law in accordance with the judgment in the King v. the Archbishop of York, and the Chapter of York.

Whether the law was first definitely laid down in the case of the deanery of York which occurs in the present volume, or not, there is no doubt that the law which subsequently prevailed with regard to all deaneries of the old foundation was quite consistent with the judgment in that case. The Sovereign was recognised as the patron paramount, and Deans "came in by election of the Chapter upon the King's *congé d'élire*, with the Royal Assent, and confirmation of the Bishop, much in the same way as the Bishops themselves."³

¹ Second Report of Commissioners to consider the state of the Established Church, 1836, p. 8.

² Dugdale's *History of St. Paul's Cathedral*, (Ed. Ellis, 1818), p. 343. See also the First Report of

Cathedral Commrs., Appendix, p. 5

³ Gibson, *Codex Juris Ecclesiastici* (2nd Ed., 1761), p. 173. See also Phillimore, *Ecclesiastical Law* (2nd Ed.), p. 127. to the same effect.

I have once again the pleasure of offering my best thanks to the Benchers of the Honourable Society of Lincoln's Inn for the loan of their valuable MS.

The present volume would have appeared months ago, had there not been delays in printing, for which I am not in any way responsible. The greater part of its successor, which will be of about the same size, has already been sent to press.

Lincoln's Inn,
11 October, 1901.

L. OWEN PIKE.

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¹ This table includes only cases in which the name of one party at least is given in the report, or in which the names of the parties have been ascertained from the record,

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THE CHANCELLOR, JUSTICES OF THE TWO
BENCHES, TREASURER, AND BARONS OF
THE EXCHEQUER DURING THE PERIOD
OF THE REPORTS.

Chancellor.

Sir Robert Parning.¹

Justices of the Court of King's Bench.

Sir William Scot, Chief Justice.

Sir Robert de Scardeburgh.

Sir Roger de Baukwell.

Sir William Basset.

Justices of the Court of Common Pleas.²

Sir John de Stonore, Chief Justice.

Sir William de Shareshulle, or Sharshulle.

Sir Roger Hillary.

Sir John de Shardelowe.

Sir Richard de Kelleshulle, or Kelshulle.

Treasurer.

William de Cusance.

¹ As to this name, see Y.B., 16 Edw. III., Part I., p. xcix. note 1, and Part II., p. xvi. note 1, and p. 513, notes 1 and 2.

² As ascertained from the Feet of Fines of the three Terms.

Barons of the Exchequer.

Sir Robert de Sadington, Chief Baron.
 Sir William de Stowe.
 Sir William de Brookesby.
 Sir Gervase de Wilford.¹

NAMES OF THE "NARRATOIRES" COUNTORS, OR
 COUNSEL.^a

Roger de Blaykeston.
 Adam Bret, or Brette.
 Hamo Derworthy.
 John de Gaynesford.
 Henry Grene, or atte Grene, or de la Grene.
 Thomas de Lincoln.
 John Moubray, or de Moubray.
 William de Notton.
 Richard de la Pole.
 John de Pulteney, or Pulteneye, or Pultenay.
 Peter de Richemunde.
 John de la Rokel, or Rokele, or Rokelle.
 Thomas de Seton.
 John de Stouford.
 Robert de Thorpe.
 William de Thorpe.

¹ There is a case on R^o 444, d. of the *Placita de Banco* Mich., 17 Edw. III., in which it appears that Sadington and Wilford were executors of the will of a Thomas de Blaston—in all probability that Thomas de Blaston who was a Baron of the Exchequer a little before, but whose death seems thus

to be ascertained. Except in the case of the Justices of the Common Bench, it is sometimes difficult, if not impossible, to fix the exact date at which a Judge once appointed died, or ceased to act.

^a Mentioned in the *Placita de Banco* as receiving chirographs of Fines.

Page 49, margin, for "*præsentavit*" read "*præsentavit*."
 „ 52, last line, for "*avowson*" read "*advowson*."
 „ 89, margin, after "*Fitz.*," insert "*Assise*, 208."
 „ 93, margin, after "*Replegiari*," add "[*Fitz.*, *Arourre*, 108]."
 „ 131, margin, for "*Formeduon*" read "*Formedoun*."
 „ 133, line 30, *dele* the figure "4," and place it after "*conisastes*" in the next line.
 „ 142, note, for "*9 Edw. III.*" read "*9 Edw. III. St. 1.*"
 „ 144, note, „ „
 „ 159, note 7, for "*16*" read "*17.*"
 „ 161, margin, add "[*Fitz.*, *Quare impedit*, 68]."
 „ 192, line 27, after the word "*language*" add "*as in the record.*"
 „ 233, second note in margin add "[*Fitz.*, *Jour*, 18]."
 „ 256, Head line for "*Hilary*" read "*Easter*."
 „ 265, note 1, add "*Edition of 1679, Henry*."
 „ 267, note 1, for "*Tothill*" read "*Old editions*."
 „ 273, note 2, for "*Rastell*" read "*Old editions*."
 „ 295, note 3, for "*Rastell, endentutz faitz*," read "*earliest editions, endentures faites*."
 „ 365, margin, for "*marchaunts*" read "*marchaunt*."
 „ 429, note 2, top of second column, for "*Radulfu*" read "*Radulfus*."
 „ 620, line 38, place the full stop before instead of after the word *Johannes*.

HILARY TERM
IN THE
SEVENTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

HILARY TERM IN THE SEVENTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

Nos. 1, 2.

A.D.
1342-3.
*Scire
facias.*
And note
as to a writ
of this
kind pur-
chased
while
another
was pend-
ing.

(1.) § *Scire facias* to have execution on a fine was sued by A. against B.—*Bret*. We tell you that heretofore this A. sued against ourselves a *Scire facias* in respect of the same tenements, and appeared; and, after aid-prayer, process was continued until the Quinzaine of Saint Martin, within which time this writ was purchased; thus this writ was purchased while the other was pending; judgment of the writ. —*SHARSHULLE*. This is not an original writ.—*Thorpe*. In the case of this writ there is the same reason for abating the writ as there is in the case of an original writ.—*SHARSHULLE*. If the first writ was at variance with the record and in disagreement with it, cannot he waive it and take another? As meaning to say that he could.—*Thorpe*. You will see by the record whether it be so.—And then the record was fetched, and it was found thereby that process was discontinued, and adjudged to be discontinued, before the date of this writ.—Therefore the exception was not allowed.—Therefore *Bret*, as tenant for term of life, prayed aid.

*Wither-
nam* in re-
spect of
beasts of
the
plough.
And note
that there
were in the
writ the

(2.) § A writ on the Statute *de averiis carucarum*¹ was sued against several persons. Some appeared, and for them *Grene* demanded judgment of the writ, because, according to the words of the writ, the taking was *contra pacem*, and the writ did not

¹ *De Districcione Scaccarii*, 51 Hen. III., St. 4, of Ruffhead; *incerti temporis* according to the Statutes of the Realm. See also 28 Edw. I. St. 3, c. 12.

DE TERMINO HILLARII ANNO REGNI REGIS
EDWARDI TERTII A CONQUESTU DECIMO
SEPTIMO.¹

Nos. 1, 2.

(1.) ² § *Scire facias* pur aver execucion hors dune ^{A.D.} fyn fut suy par A. vers B.—*Bret.* Nous vous dioms ^{1342-3.} gautrefoitz vers nous mesmes cesty A.⁴ suyst un ^{*Scire*} *facias.* Et *Scire facias* de mesmes les tenements, et apparust; ^{*nota dun*} et, apres prier⁵ eide, proces continue tanqe al Quin- ^{tiel bref} zeine de Seint Martyn, deinz quel temps cesty bref ^{*purchase*} fut purchase; issint ceo bref purchase⁶ pendant ^{*pendant*} lautre; jugement du bref.—*SCHAR.* Ceo nest pas bref ^{*un autre.*} original.—*Thorpe.* Mesme la resoun y ad en ceo bref pur bref abatre qil y ad en original.—*SCHAR.* Si le primer bref fut variant et desaccordant al recorde, nel poet il weiver et prendre autre? *Quasi diceret sic.*—*Thorpe.* Vous verres par le recorde sil soit issi.—Et puis le recorde fut quis,⁷ par quel est trove qe proces fut⁸ discontinue, et agarde pur discontinue,⁹ avant la date de ceo bref.—*Ideo non allocatur.*—Par quei *Bret*, come tenant a terme de vie, pria eide.

(2) ¹⁰ § Bref sur statut *de averiis carucarum*, fut *Wither-* suy vers plusours. Asquns vindrent, pur queux ^{*nam de*} *Grene* demanda jugement de bref, qar le bref voleit ^{*averiis*} qe la prise se fist *contra pacem*, et ne voet pas *vi* ^{*caruca-*} ^{*rum.*} ^{*Et*} ^{*nota le bref*}

¹ The reports of this Term are from the Lincoln's Inn MS., the Harleian MS., No. 741, and the Additional MSS. in the British Museum numbered respectively 22,552 and 25,184.

² From L., Harl., and 25,184.

³ The whole of the marginal note except the words *Scire facias* is from 25,184 alone.

⁴ A. is omitted from 25,184.

⁵ L., priames; Harl., pria, instead of apres prier.

⁶ The words issint ceo bref purchase are omitted from 25,184.

⁷ 25,184, pris.

⁸ Harl., est.

⁹ The words et agarde pur discontinue are from 25,184 alone.

¹⁰ From L., Harl., and 25,184.

No. 2.

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1842-3.
words con-
tra pacem
and not
the words
vi et armis,
and it was
adjudged
good.

contain the words *vi et armis*, and it cannot be understood that the taking was effected against the peace if it was not with force and arms.—*Pulteney, ad idem*. If the taking was effected within his fee, that could not be done against the peace, because a lord cannot within his fee make a distress against the peace; and if the taking was without his fee, by reason of which it might be understood to be against the peace, the writ would make mention of the fact.—*SHARDELOWE*. Some people say that what is done contrary to the prohibition of the King and of his Statute is against the peace.—*Grene*. Waste is prohibited by Statute, and yet it is not against the peace.—*SHARDELOWE*. The case is not similar.—*Thorpe*. In the case of a taking effected in the highway, and out of the taker's fee, &c., the writ shall be in the words *contra pacem*, and not *vi et armis*; and so also, as to this point, this writ should be in the same form.—*HILLARY*. Answer; we shall not abate this writ.—*Grene*. He did not take; ready, &c.—And the other side said the contrary.—*Thorpe*. We have heretofore sued process touching *Withernam*, and that is not made, and we pray a writ to the Sheriff to make it, and to deliver to us, &c., the *Withernam*.—*Grene*. You shall not have that, for we have denied the taking.—*Thorpe*. It is not reasonable that you should be believed as to your statement; and in case you have taken my beasts, and are seised, although you deny it, it would be hard, when I have not and cannot have deliverance, if I could not have *Withernam*.—*Pulteney*. When anyone acknowledges the taking, he shall wage the deliverance, but never when he denies the taking; and no more shall you have *Withernam* when you deny the taking.—*HILLARY*. You shall never have *Withernam* before the taking is proved, since he has denied it; and there is no mischief in this, because you will recover your damages, regard being

No. 2.

et armis, et il ne poet estre entendu qe la prise se fist contre la pees, si ceo ne fut pas² a force et armes. A.D. 1342-3.
 —*Pult.*, *ad idem*. Si la prise se fist deinz son fee, ceo ne put estre fait³ countre la pees, qar seignur deinz son fee ne poet pas faire destresse countre la pees; et sil fut hors de son fee, par quei la prise put estre entendu countre la pees, de ceo le bref ferreit mencion.—*SCHARD*. Asquns gentz dient⁴ qe ceo qest fait countre la defense le Roi et son estatut est countre la pees.—*Grene*. Waste est defendu par estatut, et si nest ceo pas countre la pees.—*SHAR*. *Non est simile*.—*Thorpe*. De prise faite en la haute estrete, et hors de fee, &c., le bref serra *contra pacem* et noun pas *vi et armis*; et auxi ceo bref serreit, quant a cel point, de mesme la fourme.—*HILL*. Responez; nous nabatroms pas ceo bref.—*Grene*. Il ne prist pas; prest, etc.—*Et alii e contra*.—*Thorpe*. Nous avoms suy avant ces houres proces sur le *Withernam*, et ceo nest pas fait, et nous prioms bref al Vicounte del faire et liverer a nous, &c.,⁵ *Withernam*.—*Grene*. Ceo naverez pas, car nous avoms dedit la prise.—*Thorpe*. Il nest pas resoun qe vous soiez cru de vostre dit; et, en cas qe vous avez pris mes avers, et soiez seisi, tut la dediez vous, il serreit fort,⁶ quant⁷ jeo nay ne puisse aver la deliverance, si jeo nusse le *Withernam*.—*Pult*. Quant homme conust la prise, il gagera la deliveraunce, mes jammes la ou il dedit la prise; ne nient plus averez la *Withernam* quant nous dedioms la prise.—*HILL*. Vous naverez jammes la *Withernam* avant⁸ qe la prise soit atteinte, del heure qil lad dedit; et ceo nest pas meschief, qar vous recoverez vos⁹ damages eiaunt regarde

¹ The words of the marginal note subsequent to the word *Withernam* are from 25,184 alone.

² *pas* is from 25,184 alone.

³ *fait* is from L. alone.

⁴ L., diount.

⁵ L., le, instead of &c.

⁶ The words il serreit fort are omitted from L.

⁷ Harl., quant qe.

⁸ Harl., devant.

⁹ *vos* is omitted from L.

voileit *contra pacem*, et ne mye *vi et armis*, et fuit agarde bon.¹ [Fitz., *Briefs*, 662.]

[Fitz., *Withernam*, 5.]

Nos. 3, 4.

A.D. 1342-3. had to the detention.—*Thorpe*. There are others who do not appear, and who have not pleaded, against whom there is no reason why we should not have a [writ of] *Withernam*; for should any one of them come afterwards, and be willing to avow the taking, all that is now pleaded would serve for nothing, and we should not be able to sever him in the *Withernam*; and, therefore, we pray a *Withernam* against all.—*Grene*. If a Replevin be brought against several persons, and some appear and avow, process shall not be made further against the others, but where some have pleaded further, and are at issue, as in our case, that issue must stand.—*Thorpe*. No, because damages would not be recovered against any one except against him who avows.—HILLARY. We will consider.

Note. An attorney shall not find surety to hear the verdict of a jury. (3.) § Note that on a writ of Trespass brought in the King's Bench against Nigel Tybaud and others *Non sunt inventi* was returned to the *Pluries Capias*; and the defendant was by judgment admitted to plead by attorney. And note that the attorney was admitted by bill, and that an attorney shall not find surety where he pleads to the inquest, although his principal would have done so, had he been present.

Debt on a specialty (4.) § Note that a clerk, to wit, John de Bourne, Prebendary, proffered himself against executors,

Nos. 3, 4.

à la detenue.—*Thorpe*.¹ Il y sont autres qe ne veignent pas, et qe nount pas plede, vers queux il ny ad pas cause par quei nous ne devoms aver *Withernam*; qar si asqun deux veigne apres, et voille avower la prise, tut ceo qest ore plede servireit de nient, et nous nel poms pas severer en le *Withernam*; par quei nous prioms le *Withernam* vers touz.—*Grene*. Si un *Replegiari* soit porte vers plusours, et asquns veignent et avowent, proces ne se fra pas plus avaunt vers les autres, mes la ou autres ount plede plus² avaunt³, et sount a issue, come nostre cas est, il covient qe cel issue estoise.—*Thorpe*. Nanil, qar damage ne⁴ serreit⁵ recoveri vers nul autre forsqe vers cely qe avowe.—*Hill*. Nous aviseroms.

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1342-3.

(3.)⁶ § *Nota* qen bref de Trespas porte en Baunk le Roi vers Neel Tybaud et autres, al *Capias sicut pluries*, *non sunt inventi* retourne; et le defendant fut resceu par agarde de pleder par attourne. Et *nota* qe lattourne fut resceu par bille, et attourne ne trovera pas soerte ou il plede al enquest coment qe soun mestre lust fait, sil ust este present.

Nota.
Attourne
ne trovera
mye sourte
dentendre
enqueste.⁷

(4.)⁸ § *Nota* qun clerk, saver, Johan de⁹ Bourne, provendrre, se profry vers executours demandantz en

Dette par
un
especialte

¹ *Thorpe* is omitted from L.

² plus is from L. alone.

³ 25,184, a devant.

⁴ ne is from L. alone.

⁵ 25,184, serra.

⁶ From L., Harl., and 25,184.

This case appears among the *Placita coram Rege* of Hilary Term 17 Edward III., R^o 63. The action was brought by Adam Hurel, of London, against Nigel Tybaud and others, in respect of taking and carrying off the plaintiff's goods and chattels. The plaintiff and defendants appeared by attorney, but the points mentioned in the report are not found in the record.

⁷ The marginal note is from 25,184 alone. In Harl. it is simply Trespas.

⁸ From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Hill, 17 Edw. III., R^o 63. It there appears that the action was brought by the executors of the will of John de Bourne, knight, against John de Bourne, "præbendarius præbendæ de Langeforde in ecclesia beatæ Mariæ Lincolniensi."

⁹ All the MSS. of Y.B., Thomas, instead of John de. Thomas de Bourne was, according to the record, one of the executors.

No. 4.

A.D.
1342-3.
in which
was the
word
Canonicus,
and the
word in
the writ
was *Præ-
bendarius*,
and the
writ was
adjudged
good.

plaintiffs in a writ of Debt; and he prayed that they might be called, and this he did in order that he might have had a non-suit.—And *Richemunde* began to count.—*Thorpe*. The Original Writ is not in this Court, and we will not plead without the Original.—*Richemunde*. Then we pray that you record his presence and that he has proffered himself against us, and we will cause the Original to come.—*Thorpe*. They shall not do that, because a *Distringas Episcopum* issued to cause the Bishop's Clerk to come and that writ is not served; thus we have not a day.—*Richemunde*. When you are in Court, even though the writ be not served, you have sufficiently a day by the roll.—HILARY. He shall not plead, if the writ was not served, unless he will do so *gratis*.—Then *Richemunde* counted how the defendant granted by his deed that he was holden to their testator in a pension of forty pounds *per annum*, for his life, as long as the same person as is defendant was advanced to a benefice of Holy Church; and he counted that four score and ten pounds were in arrear during the life of their testator, and also that their testator lent him thirty pounds, &c.—*Thorpe*. Judgment of the writ: for the words of the specialty are *Canonicus in Ecclesia Beate Marie Lincolnie*, and the words of the writ are *Præbendarius in Ecclesia*, &c., and thus at variance.—*Grene*. Both expressions are of one meaning, and *Præbendarius* is the form of the writ, and not *Canonicus*.—SHARSHULLE. Answer; the writ is good.—*Thorpe*. Judgment of the writ: for John against whom the writ is brought is Provost of Byngham, and is not named by his name of dignity; judgment.—And this exception was not allowed, because nothing was demanded in right of the Provostship.—*Thorpe*. As to the obligation, under

No. 4.

un bref de Dette; et pria qils fuissent demandes, et ceo fist il pur aver eu un nounsuyte.—Et *Rich.* comencea de counter.—*Thorpe.* Loriginal nest pas ceinz, et nous ne voloms pas pleder sanz loriginal.—*Rich.* Donques prioms qe vous recorder sa presence, et qil sad profert vers nous, et nous ferroms loriginal vener.—*Thorpe.* Ceo ne ferront il pas, qar *Distringas Episcopum* issit de faire vener son clerk, quel bref nest pas servi; issint navoms pas jour.—*Rich.* Quant vous estes en Court, tout ne soit pas le bref servi vous avez par roulle jour assez.—*HILL.* Il ne pledra pas, si le bref ne fut servi, sil ne voet¹ de gree.²—Puis *Rich.*⁴ counta coment le defendant graunta par son fait estre tenuz a lour testatour en un pension⁵ de xl. li. par an, pur sa vie, si longement come mesme⁶ cely qest defendant fut avaunce a benefice de Seinte Eglise; et counta qe $\frac{xx}{iii}$. x li. furent arere en la vie lour testatour, et auxi lour testatour luy apresta xxx li., &c. [*Fitz., Variauns, 62.*]
—*Thorpe.* Jugement du bref; qar lespecialte voet *Canonicus in Ecclesia Beate Marie Lincolnie*, et le bref voet *Præbendarius in Ecclesia*, &c., issint variaunt.—*Grene.* Lune parole et lautre est dune entente, et *Præbendarius* est fourme de⁷ bref, et noun pas *Canonicus*.⁸—*SCHAR.* Respondez; le bref est bon.—*Thorpe.* Jugement du bref: qar Johan vers qi le bref est porte, est Provost⁹ de Byngham, nient nome par noun de dignite; jugement.—*Et non allocatur*,^{6.]} qar rien est demande de dreit de la Provosture.¹⁰—

¹ The marginal note after the word Dette is from 25,184 alone.

² 25,184, soit.

³ The words of *Thorpe*, *Richemunde*, and *HILLARY*, down to this point, are not represented in the roll.

⁴ *Richemunde's* count or declaration is to the same effect as that in the roll.

⁵ *Harl.*, enpension.

⁶ mesme is omitted from *Harl.*

⁷ 25,184, dun.

⁸ 25,184, *Canonicos*.

⁹ 25,184, Provot.

¹⁰ The above pleas in abatement of the writ are not represented in the roll. The statement in *Fitzherbert's Abridgment* that "Provost" is not a name of dignity is not in accordance with the report.

No. 5.

A.D. 1842-3. age at the time of execution ; ready, &c. And as to the thirty pounds lent we do not detain any money from the executors ; ready to defend against them and their suit by our law.—*Richemunde*. This is in respect of another person's contract, and therefore the wager of law does not lie.—*SHARSHULLE*. Accept the wager of law, I advise you.—*Richemunde* did so.—And as to the deed *Richemunde* said : Of full age ; ready, &c.—And the other side said the contrary.

Scire facias on a judgment, to wit, on behalf of a Dean, other than the Dean who recovered, of whom the writ made no mention, but it was pleaded, in abatement of the writ, that he was another person. Notwithstanding this, the writ was adjudged good.

(5.) § The Dean and Chapter of Lichfield brought a *Scire facias* on a recovery on a writ of Annuity against the Prior of Tickford.—*Grene*. Judgment of the writ : for we tell you that the name of that Prior who was party to the judgment was W., and the name of this Prior is Fulk, and he does not make us successor by the writ ; judgment.—*Pole*. The writ supposes the recovery *versus tunc Priorem*, and the garnishment is now sued *versus nunc Priorem*, so that this can only be understood to be a different person ; and we could not name the predecessor by his baptismal name because that would be at variance with the record.—

No. 5.

Thorpe.¹ Quant al obligacion, deinz age al temps de la confection; prest, &c. Et quant a xxxli. daprest² que nul denier ne detenoms a les executours; prest a defendre countre eux et lour suite par nostre ley.—*Rich*. Cest dautri³ contract, par quei la ley ne gist pas.—*SCHAR*. Resceyvez la ley, jeo loo.⁴—*Rich. ita fecit*.—Et quant al fait de plein age; prest, etc.—*Et alii e contra*.⁵

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1342-3.

(5.)⁶ § Le Dean et le Chapitre⁸ de Lichefelde⁹ porterent *Scire facias* hors dun recoverir sur bref dannuite¹⁰ vers dun juge-le Priour de Tikeford.¹¹—*Grene*. Jugement du bref: ment, cest qar nous vous dioms que celui Priour que fut partie al jugement, avoit a noun W., et cesty Priour F.,¹² et il que ne recovère, de ne nous fait pas successeur par bref; jugement.—*Pole*. Le bref suppose le recoverir *versus tunc Priorem* ne fit pas mention, et le garnisement est ore suy *versus nunc Priorem*, mes plede issint que ceo ne poet estre entendu mes diverse persone; fut a labatre du et nous ne poames pas nomer le predecessour par bref qil fut noun de baptisme,¹³ pur ceo que ceo serreit variaunt al persone. *Hoc non*

¹ Thorpe's plea here is to the same effect as that in the roll.

² L., prest; Harl., dargent.

³ 25,184, dentrer.

⁴ According to the record the defendant waged his law, as to the £30, performed it, and had judgment in his favour.

⁵ This issue was tried by a jury at Nisi prius. The verdict was "quod prædictus Johannes de Bourne, præbendarius, fuit plenè etatis tempore confectionis prædicti scripti, et non infra etatem, ad damnum prædictorum executorum viginti marcarum." Judgment was accordingly given for the executors to recover the £90 and damages.

⁶ From L., Harl., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*,

Hil., 17 Edw. III., R^o 21. It there appears that the original recovery of the annuity was against the then Prior of Newport Pagnel, and that the *Scire facias* was brought against Fulk Chaumpeneys, Prior of the same place. For the dispute whether the Prior ought to be called Prior of Tickford or Prior of Newport Pagnel, and the abatement of a previous writ of *Scire facias*, see Y.B., Mich., 16 Edw. III., No. 2.

⁷ The words of the marginal note after *Scire facias* are from 25,184 alone.

⁸ L., Chapistre.

⁹ L., Licchisfille.

¹⁰ 25,184, dacompte.

¹¹ 25,184, Tutebury.

¹² MSS. of Y.B., J.

¹³ L., baptyme.

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1342-3.

Thorpe. *Tunc Prior* and *Nunc Prior* could be understood to be one and the same person : for he who then was and now is Prior might be one and the same person ; besides, heretofore the plaintiff brought a *Scire facias* against us, and because we were not made successor, the writ abated, and then we were compelled to give a name in certain of our predecessor in order to give the plaintiff a good writ, and we so did, so that on the exception then made he ought to have brought his writ in accordance, &c.—SHARSHULLE. It seems to us that sufficient diversity is assigned between your predecessor and you, to wit, *tunc* and *nunc* ; and the first writ was abated because it purported expressly that the recovery was made against yourselves, for the words of the writ were *versus prædictum Priorem*, which could only be understood to be the same person that was previously named.—*Grene.* Again, judgment of the writ : for it is supposed by the writ that certain arrears subsequent to the judgment were incurred in the time of our predecessor, and also that certain arrears were incurred in our time, and the subsequent words of the writ are *nondum reddiderunt*, supposing that we ought to have rendered in the time of our predecessor, and also that he ought to have rendered arrears incurred in our time, which could not be.—SHARSHULLE. Answer.—*Grene.* Judgment of the writ : for we tell you that the name of the person who was then Dean was J., and the name of the present Dean is W., and so he is another person, and the writ supposes both to be the same person ; judgment.—SHARSHULLE. What ought to be the words of the writ ?—*Thorpe.* *Tunc Decanus et Capitulum* and *nunc Decanus et Capitulum*.—SHARSHULLE. That could not be,

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recorde.—*Thorpe.* *Tunc Prior et Nunc Prior* pount estre entendu tut une mesme persone: [qar cely qadonques fut et ore est Priour pount estre une mesme persone]¹; ovesqe ceo, autrefoith il porta *Scire facias* vers nous, et pur ceo qe nous ne fumes pas fait successeur, le bref abatist, et adonques fumes chace² de doner certain noun de nostre predecessour, pur luy doner bon bref, et issi feimes,³ issint qe sur excepcion⁴ adonques il duist aver porte son bref acordant, &c.—*SCHAR.* Il semble a nous qe cest assez diversite entre vostre predecessour et vous, saver, *tunc* et *nunc*; et le primer bref fut abatu pur ceo qil voleit expressement qe le recoverir se fist vers vous mesmes, qar le bref voleit *versus prædictum Priorem*, qe ne put estre entendu mes mesme⁵ celui qe devant fut nome.—*Grene.*⁶—Uncore jugement du bref⁷: qar par le bref⁸ est suppose qe certainz arrerages puis le jugement furent encoruz en temps nostre predecessour [et auxi certainz arrerages en nostre temps, et puis le bref voet *nondum reddiderunt*, supposant qe nous duissoms aver rendu en temps nostre predecessour],⁹ et auxi il dust aver rendu arrerages encoruz en nostre temps, qe ne put estre.—*SCHAR.* Respondez.—*Grene.* Jugement du bref: qar nous vous dioms qe celui qe fut Dean adonques avoit a noun J., et cesty qore est Dean¹⁰ ad a noun W., issint autre persone, et le bref suppose tout estre¹¹ une mesme persone; jugement.—*SCHAR.* Coment dirreit le bref?—*Thorpe.* *Tunc Decanus et Capitulum et nunc Decanus et Capitulum.*—*SCHAR.* Ceo ne put

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¹ The words between brackets are omitted from L.

² Harl., chasce.

³ L., fesoms.

⁴ Harl. and 25,184, nostre excepcion.

⁵ L., vers.

⁶ L. and Harl., *Gayn.*

⁷ The words du bref are omitted from 25,184.

⁸ L., primer bref.

⁹ The words between brackets are omitted from 25,184.

¹⁰ The words est Dean are omitted from Harl., and the word Dean is omitted from L.

¹¹ estre is omitted from L

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for that would be to suppose that there is now a Chapter other than there then was; and that cannot be so, because the Chapter is always one, and cannot die.—STONORE. Whence comes a Dean? as meaning to say through the Chapter.—*Thorpe*. By election, in the same way as a Prior; nevertheless diversity shall be assigned between divers Priors, and in like manner between two Deans.—And afterwards the writ was adjudged good.—*Grene*. Then we tell you that the Prior is a monk of the Abbot of Marmoutiers, dative, and removable at the will of the latter; and we tell you that our Lord the King, because the Prior is an alien, has seized into his hand all the Priory with the appurtenances, and we have nothing, except at the King's will, rendering to him the very value. And we do not understand that this writ lies against us.—*Pulteney*. These are two pleas: one is that you are removable; the other is that the King is seised.—SHARSHULLE. We do not lay stress on his statement that the Prior is removable; but in respect of that which he says as to the Priory being in the King's hand he gives us reason to consider carefully whether we shall award execution.—*Thorpe*. The writ does not lie, since the King is seised of the freehold, nor shall the Prior have a writ to demand the freehold, nor shall he recover for the time.—SHARSHULLE. It is held to be undoubted that the King is not seised of the freehold by means

No. 5.

estre, qar ceo serreit a supposer qil y ad ore autre Chapitre¹ qe adonques ne fut; et ceo ne poet estre, qar le Chapitre est touz jours un, et ne poet muryr.²—STON. Dount vient Dean? *quasi diceret* de Chapitre.¹—THORPE. Par eleccion, auxi come Priour; ne pur quant diversite serra fait entre divers Priours, et issint entre deux Deans.—Et pus le bref fut agarde bon.—GRENE. Donques vous dioms qe le Priour est moigne Labbe de Mermestre, datife, et remuable a sa volunte; et vous dioms qe nostre Seignur le Roi, pur ceo qil est alien, ad seisi en sa meyn toute la Priorie ove les appurtenances, et nous navoms rienz forsque a la volunte le Roi rendant a luy³ la verreie value. Et nentendoms pas qe cesti bref vers nous igise.⁴—PULT. Ceux sont deux ples: un est qe vous estes remuable; autre est qe le Roi est seisi.—SCHAR. Nous ne chargeoms pas cella qil dit qil est remuable; mes de ceo qil dit⁵ qe la Priorie est en la meyn le Roy, il fait a garder si nous agarderoms execucion. THORPE. Le bref ne gist pas puis qe le Roi est seisi de franc tenement,⁶ ne le Priour avera pas bref a demander franc tenement, ne recoversa pur le temps.—SCHAR. Homme le tient pas⁷ doute qe le Roi nest pas seisi del franc tenement.

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1342-3.[Fitz.,
Scire
facias, 7.]¹ L., Chapistre.² L., morer.³ The words a luy are from L. alone.⁴ The plea, according to the record, was "quod ipse est monachus Abbathie de Mermousteres, dativus et amotivus ad voluntatem Abbatis loci illius. Et, quia eadem Abbathia est de protestate inimicorum domini Regis de Francia, dominus Rex seisiri fecit in manum suam omnes possessiones Abbathie predictae in Anglia existentes, occasione guerrae inter ipsum dominum Regem et illos de Francia motae, et postea

"idem dominus Rex retradidit ipsi Priori easdem possessiones pro certa firma eidem domino Regi, ad Scaccarium suum, reddenda, unde dicit quod executio predicta, si predictis Decano et Capitulo concessa fuit, cederet in operationem Prioratus predicti perpetuam; per quod non intendit quod ipse in hoc casu ad hoc breve respondere debeat," &c.

⁵ The words qil dit are from 25,184 alone.⁶ The words de franc tenement are from L. alone.⁷ L., pur.

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of such a seizing, but he holds only in the name of distress; and that we have all lately adjudged in the Chancery, and decided that an alien Prior was charged to support all manner of charges.—*Thorpe*. No one in the world has a warrant to adjudge, with respect to the King's seisin, in this case of what nature it is, except the King himself.

*Scire
facias*

§ The Dean and Chapter of Lichfield sued a *Scire facias* against the Prior of Newport Pagnel, to show whether he could say anything wherefore they should not have execution in respect of an annuity which they had recovered against the Prior's predecessor in the second year of the reign of the present King, and also in respect of the arrears for which he had become liable since the judgment was rendered, &c.—*Thorpe*. You see clearly how we are warned to answer wherefore they ought not to have execution in respect of an annuity which they recovered against our predecessor; thus it is supposed by the words of their writ that the present Dean and Chapter recovered the annuity; and to that we say that at the time at which they suppose the recovery to have been made, one J. de B. was Dean of the same House, and now one Hubert son of Ralph is Dean, &c.; and thus the writ is false; and therefore we demand judgment of the writ.—*Pole*. We cannot have any other writ.—*Thorpe*. You can, because you will be able to say in your writ that you sued to have execution *de quodam annuo redditu quem J. de B. tunc Decanus et Capitulum recuperaverunt*, &c., and so to make mention of J. de B. in your writ.—SHARDELOWE. That writ which you give would be bad, because by the words *tunc Decanus* it would be supposed that the J. de B. mentioned was then Dean, and that the Chapter was Chapter jointly

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ment par tiel seisir,¹ mes soulement en noun² de destresse; et ceo avoms trestouz tarde ajuge en la Chauncellerie, et agarde qun Priour alien fut charge a supporter touz maners de charges.—*Thorpe*. Homme de mounde nad garrant dajuger la seisine le Roi en ceo cas, quele ele est,³ forsqe le Roi mesme.

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§ Le⁴ Dean et le Chapitre de Lichefelde suerent un *Scire Scire facias* vers le Priour de Newport Panel, sil savoit rien dire pur quei ils naveroint execucion dune annuite quele ils ount recoveri vers le predecessour le Priour lan le seconde le Roi qore est, et auxi des arrerages encoruz puis le jugement rendu, &c.—*Thorpe*. Vous veies bien coment nous sumes garnis a respoudre pur quei ils ne doivent aver execucion dune annuite quele ils recoverirent vers nostre predecessour; issint par les paroles de lour bref est suppose qe le Dean et le Chapitre qore sont ount recoveri lannuite; et a ceo dioms nous qe, a cel temps qils supposent le recoverir estre fait, un J. de B. fuit Dean de mesme le mesoun, et ore un Hubard le Fitz Raulf est Dean, &c.; et issint le bref faux; par quei demandoms jugement de bref.—*Pole*. Nous ne poioms autre bref aver.—*Thorpe*. Si poiez, qar vous purrez dire en vostre bref qe vous suistes daver execucion *de quodam annuo redditu quem J. de B. tunc Decanus et Capitulum recuperaverunt*, &c., et issint faire mencion en vostre bref.—*SCHARD*. Ceo bref qe vous dones serreit malveis, qar par cele parole *tunc Decanus* serreit suppose qe cel J. de B. fuit adonques Dean et le Chapitre jointment, quel

¹ L., seiser.

² L., lieu.

³ L., soit.

⁴ This report of the case appears by itself in the old editions as No. 56. No MS. of it has been discovered, and it is not represented in Fitzherbert's *Abridgment*. It is, however, sufficiently in agreement

with the record to show that it is founded on some contemporary authority. The text has now been corrected, and the abbreviations extended so as to be, as far as possible, in accordance with the average French of the period, and not with the perversions of it current in the 16th and 17th centuries.

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with him; but it would be inconvenient to adjudge this, because that word *tunc* will have relation to both; but in case the Dean alone had had to make use of an action in respect of something which his predecessor alone had recovered your plea would be good, because in such case the words of the writ would be *tunc decanus*; but here the case is different, as in case an Abbot alone sued a *Scire facias* in respect of something annual which his predecessor alone had recovered, the words of his writ would be *de quodam annuo redditu quem un B. tunc Abbas ejusdem domus recuperavit*, but supposing he sued the *Scire facias* to have execution of an annuity which his predecessor and his Convent had recovered jointly, the *Scire facias* would in that case be in such form as the writ is in this case.—Therefore the writ was adjudged good.—*R. Thorpe*. Then we say that the Priory of Newport is but a cell of the Abbey of Marmoutiers, and this Prior is dative, and removable at the will of the said Abbot of Marmoutiers; and we say that, because this Abbot is of the allegiance of France, our Lord the King seized the possessions of the said Priory into his hand, and leased them to us, to hold at his will, rendering a certain rent *per annum*; thus we are tenant at the King's will, and we demand judgment whether you will proceed further on this writ without consulting the King.—*Pole*. Since he does not show the King's charter nor anything else which proves him to be tenant in the manner he has said, we demand judgment, and pray execution.—*R. Thorpe* then made *profert* of a writ from the Chancery which witnessed that the King had the possessions of the Priory of Tickford, and had leased them to the Prior in the same manner as *R. Thorpe* said, as appears above, &c.—*Pole*. You see plainly how our suit is to have execution against the Prior of Newport, and this writ of which they have

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serreit inconvenient dajuger, qar cele parole *tunc* avera relacion a lun et lautre ; mes en cas qe le Dean soul fuit a user accion de chose quele soun predecessour soul ust recoveri, vostre plee serreit bon, qar en tiel cas le bref serreit *tunc Decanus* ; mes icy le cas est autre, come en cas qun Abbe soul suist *Scire facias* de chose annuele quele soun predecessour soul ust recoveri, son bref dirreit *de quodam annuo redditu quem un B. tunc Abbas ejusdem domus recuperavit*, mes en cas qil suist le *Scire facias* daver execucion dune annuite qe son predecessour et son Covent ount recoveri jointement, le *Scire facias* serra en cel cas tiel come cest bref est cy ; par quei le bref fuit agarde bon.—*R. Thorpe*. Donques dioms nous qe la Priourie de Neuport nest qune Selle del Abbe de M., et cesti Priour est datife, et remuable al volunte le dit Abbe de M. ; et dioms, pur ceo que cesty Abbe est del aliance de France, nostre Seignur le Roi seisisit les possessions del dit Priourie en sa meyn, et les lessa a nous, a tener a sa volunte, rendaunt certain rent par an ; issint sumes nous tenant a volunte le Roi, et demandoms jugement si en cest bref voilles avant aler sans counseiller al Roy.—*Pole*. Del heure qil ne moustre mye le chartre le Roy, ne autre rien qe luy prove estre tenant en la manere come il ad dit, nous demandoms jugement, et prioms execucion.—*R. Thorpe* puis mist avant un bref de la Chauncellerie qe tesmoigna qe le Roy avoit les possessions de la Priourie de Tekeford, et les avoit lesse a Priour en mesme la manere come *R. Thorpe* dit, *ut patet supra*, &c.¹—*Pole*. Vous veiez bien coment nous sumes daver execucion devers le Priour de Neuport, et cest bref le quel ils

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¹ Pole's objection as to the proof does not appear on the roll, but the *Profert* of a writ close to the Justices (dated the 4th of February) immediately follows the conclusion of the plea, and in the writ are

mentioned Letters Patent to the effect stated by R. Thorpe. The Justices are directed to act so that there be no prejudice to the King or the Prior while the latter has custody of the Priory, unless the

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made *profert* supposes the Priory of Tickford to be seized into the King's hand, and the Prior of Tickford cannot be understood to be the same person as he against whom our writ is brought; wherefore judgment.—*R. Thorpe*. We say that he is the same person, and that you do not deny; wherefore we demand judgment of your writ.

Appeal of
the Death
of a man
sued by
the heir in
respect of
the death
of his
father.

(6.) § Note that, in the King's Bench, Adam sued an Appeal against John, in respect of the death of his father feloniously slain. John waged Battle in the form following. With his left hand he took Adam by the hand, and kept his right hand outside the Book and said:—"Hear this, you man who give your name as Adam by baptismal name, that I, a man who give my name as John by baptismal name, on such a day, in such a year, and at such a place, did not feloniously slay your father, named W., as you surmise against me, and of that felony I am Not Guilty, so help me God and his Saints"—(and he kissed the Book)—; "and this I will defend against you with my body, as

King be consulted, especially as the Prior cannot be a party to bring the rights of the Priory into question while he is the King's farmer. A copy of the Letters Patent, dated

5 Feb. in the 16th year of the reign, is also sent to the Justices, with another writ close dated the 17th Feb. in the 17th year.

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ont mis avant suppose la Priourie de T. estre seisie en la meyn le Roi, quel ne puit pas estre entendu mesme la persone vers qi nostre bref est porte; par quei jugement.—*R. Thorpe*. Nous dioms qil est mesme la persone, quele chose vous ne dedites pas; par quei nous demandoms jugement de vostre bref.¹

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(6.)² § *Nota*, qen Baunk le Roi Adam suist un appelle vers Johan de la mort son pere felonousement tue. Johan gagea la bataille en ceste fourme. De sa³ meyn senestre⁴ il prist Adam par la⁵ meyn, et tient sa meyn destre outre le livere, et dist :—Ceo oiez vous, homme qe te faites nomer Adam par noun de baptisme, qe jeo homme qe me face nomer Johan par noun de baptisme qe jeo tiel jour, an, et lieu felonousement ne tua pas vostre pere W.⁶ par noun, come vous moy sourmettez, ne de cele felonie su coupable, si Dieu⁷ meide,¹⁰ et ses Seynts—(et baisa le livere)—; et ceo defendrai¹¹ countre vous par mon corps come

Appel² de mort de homme suy pur leir de la mort son pere.⁴
[17 Li. Ass., 1; Fitz., *Corone et ples del Corone*, 111.]

¹ Pole's exception as to the naming of the Prior is not directly represented in the record, but the *Profert* of the writ of the 4th of February is immediately followed by *Profert* of another writ of similar purport, dated the 14th of February, containing a clause omitted from the former, viz :—"Si vobis "constare poterit præfatum Priorem "sub cognomine de Neuport Paynel nominatum Priorem existere "cui custodiam Prioratus prædicti "commisimus," and at the end "prædicta variatione de Neuport "Paynel et Tykford non obstante."

According to the record the case ended as follows. In the Letters Patent granting the custody of the Priory to the Prior, and exempting him from various charges as between him and the King, there was this clause : "ita . . . quod omnia "alia onera eidem Prioratui, terris, "et tenementis prædictis incum-

"bentia facere et sustentare ten-eatur." The Prior made default after an adjournment, and at the instance of the Dean and Chapter, the King sent yet another writ close to the Justices reciting the previous proceedings and the words of the Letters Patent above quoted, and directing the Justices to proceed without delay. Execution was thereupon awarded for the Dean and Chapter.

² From L., Harl., and 25,184.

³ 25,184, *appellum*.

⁴ The words of the marginal note subsequent to appel are from 25,184 alone.

⁵ L., la.

⁶ 25,184, *sinestre*.

⁷ Harl., *sa*.

⁸ 25,184, B.

⁹ L., *Deu*.

¹⁰ Harl., *moy eide*.

¹¹ L., *defendra*.

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this Court shall adjudge.”—Then Adam with his left hand took John by the hand, and kept his right hand outside the Book, and said, in this form :—“ Hear this, you man who give your name as John by name of baptism, that on such a day, in such a year, and at such a place, you did feloniously slay my father, W. by name, so help me God ”—(and he kissed the Book)—; “ and this I will deraign against you by my body, according as the Court shall adjudge.—BASSET. Both of them must be in custody until the battle is stricken, for neither shall come into contact with the other.—*Pole*. The plaintiff is not in the position of a felon in Court, and he has done that which the law directs, and, even if he be non-suited afterwards, he shall have no more punishment after battle waged than before, and so he ought to be at his ease, and it will be to the advantage of the King and the King’s Crown that he be favoured.—And afterwards BASSET took four mainpernors bound to produce him, body for body, on the third day afterwards, which day was chosen by the plaintiff himself to perform the deraignment. And the Marshal was commanded to keep the defendant in safe custody, and that the defendant should be at his ease, and that he should have to eat and to drink, and that the Marshal should produce him on the third day, girded for battle at his own cost ; and so also shall the plaintiff be.—*Notton*. It was never heretofore seen that the plaintiff in appeal found mainprise, but only two pledges for the battle.—And note that the defendant had been acquitted of the same felony at the King’s suit ; but his counsel

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ceste Court agardera.—Puis Adam de sa meyn senestre¹ prist Johan par la meyn, et tient sa meyn destre outre le livere, et dist en ceste fourme:—Ceo oyez vous homme qe par noun de baptisme te faites nomer Johan, qe vous felonousement tiel jour, an, et lieu, tuastes mon pere W. par noun, si Dieu² meide,³ &c. (et baisa⁴ le livere), et ceo desrenera vers vous par moun corps, solonc ceo qe la Court agardera.—Basset. Il covient qe lun et lautre soient en garde tanqe la bataille soit feru, qar nul adesera autre.—*Pole*. Le pleintif nest pas come feloun en Court, et il⁵ ad fait ceo qe la ley voet, et, tout soit il apres nounsuy, nient plus de penaunce avera il apres bataille gage come devant, et auxi il se deit eiser, et il serra en avantage du Roi et sa Corone qil soit favore.—Et puis Basset prist iiij meynpernours de luy aver,⁶ corps pur corps, al tierce jour apres,⁷ quel⁸ jour fuit choise⁹ par le pleintif mesme a parfourner¹⁰ la dereyne.¹¹ Et comande fut au marescal de¹² garder sauvement le defendant, et qil fust ese,¹³ et¹⁴ qil ust a¹⁵ maunger et beyre,¹⁶ et¹⁷ qil luy ust¹⁸ le tierce jour correye¹⁹ de bataille a ses²⁰ custages demenes; et auxi serra le pleintif.—*Nottone*. Unques ne fut vewe devant²¹ ore qe le pleintif en appelle trova meynprise, mes soulement²² deux plegges de la bataille.—*Et nota*, qe le defendant fut acquite de mesme la felonie a la suite le Roi; mes son counseil nosa sur

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1342-3.¹ 25,184, sinestre.² L., Deux.³ 25,184, moi eide.⁴ Harl., beysa.⁵ il is omitted from L. and Harl.⁶ aver is omitted from L.⁷ L., a tiel jour, instead of al tierce jour apres.⁸ Harl., a quel.⁹ L., il fist choisir; Harl., fuit chase, instead of fuit choise.¹⁰ 25,184, affaire, instead of a parfourner.¹¹ Harl., dereigne; 25,184, derene.¹² L., a.¹³ L., eise.¹⁴ et is omitted from L.¹⁵ L., de.¹⁶ L., de beire; Harl., beyver.¹⁷ et is omitted from L.¹⁸ L., lust, instead of luy ust.¹⁹ L., corue; 25,184, corraie.²⁰ L., ces.²¹ L., avaunt.²² L., forqe, instead of mes soulement.

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A.D. 1342-3. did not dare to abide judgment thereon, because it was within the year.—Afterwards the plaintiff was non-suited, &c.

Note :
Protection.

(7.) § Note that a Protection which is of later date than the fourth day of the plea is allowed in a plea of land, because the party is in the King's service. .

Assise of
Novel
Disseisin,
in which
a simple
release
was
pleaded
in bar of
the assise,
in defeas-
ance of
which
release
was
pleaded a
payment
of money
made by
virtue of a
condition.
And note:
the com-
mon
opinion
was that
a release
may be
avoided by

(8.) § Novel Disseisin in the County of Leicester. The tenant pleaded the plaintiff's release in bar. In avoidance of the release was pleaded an indenture between the plaintiff and the person to whom the deed of release was made, purporting that, if the plaintiff should pay £50, on a certain day, at Grantham in the county of Lincoln, the release should lose its force, and otherwise should stand in force; and the plaintiff alleged that on the appointed day he went to Grantham and sought John de Chesterton, to whom the release was made, in order to pay him the money, and, because John was not there, the plaintiff followed him, on the same day, to Redmile in the county of Leicester, and found him there, and tendered him, on the same day, the £50, and he refused it; and [said Counsel for the plaintiff] we again tender the money, ready to deliver it to the person who pleads in bar, if the Court

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ceo demorer, pur ceo qe ceo fut deinz lan.—Puis le A.D.
pleintif fut nounsuy, &c. 1342-3.

(7.) ¹ § *Nota* qe proteccion qest de pusne date que *Nota* :
le quart jour du plee est alowe en plee de terre,² *Protec-*
eo quod est in servitio Regis. *cion.*³
[Fitz.,
Protec-
cion, 48.]

(8.) ⁴ § *Nova Disseisina* en le Counte de Leycestre. Assise de
Le tenant pleda en barre par relees le pleintif. En Novele
voidance del relees plede fuit par une⁵ endenture Disseisine,
entre le pleintif et celuy a qi le fait de⁶ relees se on un re-
fist, qe voleit qe si le pleintif paiast *Lli.*, a certain lees simple
jour, a Grantham en le Counte de Nichole qe le fut plede
relees perdreit sa force, et autrement esterreit en sa en barre
force; et alleggea coment a mesme le jour il vint a dassise, en
Grantham et quist Johan de Chestretone⁷, a qi le desesaunce
relees fut fait, pur luy aver paye les deners, et pur de quel
ceo qil ne fut pas la,⁸ il luy pursuist, mesme le jour, relees
a R.⁹ en le Counte de Leycestre, et illoeques luy¹⁰ par force
trova, et luy tendist mesme le jour les *L. li.*, et il dune con-
le¹¹ refusa; et unqore tendoms les deners, prest a¹² *nota* :
liverer¹³ a¹⁴ celuy¹⁵ qe plede¹⁶ en barre,¹⁷ si la Court *communis*
auxi bien *opinio*
estre voide *[fuit]* qe
relees poet

¹ From L., and 25,184.

² The marginal note is from 25,184 alone.

³ The report ends here in L.

⁴ From L., Harl., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil. 17 Edw. III., R° 55. It there appears that the assise was brought before Justices of Assise in Leicestershire by Thomas de St. Hillary, of Harpole, against Margery, late wife of John de Chesterton and others.

⁵ une is from Harl. alone.

⁶ The words fait de are omitted from L.

⁷ The words de Chestretone are from 25,184 alone.

⁸ The statement that the plain-

tiff sought for John de Chesterton at Grantham does not appear in the pleadings on the roll, but on the contrary it was alleged in a rejoinder that John de Chesterton was at Grantham on the appointed day, expecting payment, and that neither the plaintiff nor any one on his behalf was there.

⁹ MSS. of Y. B., N.

¹⁰ 25,184, il.

¹¹ le is from L. alone.

¹² Harl., de.

¹³ L., paier.

¹⁴ 25,184, et.

¹⁵ Harl. and 2,584, lassigne.

¹⁶ Harl., pleda.

¹⁷ The words en barre are omitted from L.

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a collateral
deed, just
as a
charter of
feoffment,
obligation
for debt,
and the
like.

shall so adjudge; judgment whether the plaintiff ought to be barred by the deed.—The tenant demanded judgment inasmuch as in the indenture a certain place is limited at which the tender and the payment should be made, whether the law puts him to answer as to a tender alleged to have been made in another place.—And upon this they were adjourned into the Bench.—*Grene*. If he had accepted the money at the place at which he was found, it is clear that, without having any acquittance, we should have averred the payment, and thereby proved the release void, although the payment was made in a place other than that which the indenture limits; therefore, since we tendered, &c. (which fact they do not deny) so that there was no default on our part, but our tender threw it back on the other party who would not accept the money, this shall not be turned to our damage.—*Seton, ad idem*. The substance of the indenture is that the release was made for security of the money; therefore, when the tender was made in the place in which the party himself was, which is equivalent to a payment by the person tendering, the covenant as a whole was performed, so that no weight is to be attached to the place of tender.—*Pulteney*. When the place at which the payment was to be made is assigned with certainty, it is immaterial whether the person who was to receive the money was there, or not, on the day on which the payment was to be made, for if the plaintiff had gone to Grantham, in his absence, on the appointed day, he would have performed the covenant on his part; therefore, as he might have performed the covenant at that place, and did not, it seems that it is his default, and the law does not put us to answer anything that he says as to a tender elsewhere.—*SHARSHULLE*. To some

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agardera ; jugement si [par le fait deive estre barre].¹— A.D. 1342-3.
 Le tenant demanda jugement de si come en lendenture par let de
 est limite certain lieu ou le tendre se freit, et paie- couste,
 ment, si a tendre allegge² en autre lieu ley luy come
 mette a respoudre.—Et sur ceo ajournes en Baunk.⁴ chartre de
 —*Grene*. Sil ust resceu les deners la ou il fut trove, feffement,
constat qe sanz acquitaunce nous ussoms aver le paie- obligacion
 ment, et par tant prove le relees voide, tut se fist⁵ le de dette,
 paiement en autre lieu qe lendenture ne limite ; *et hujus-*
 donques quant nous tendissoms, &c., quele chose il ne *modi.*³
 dediount pas, issint qe ceo ne fut pas nostre default, [17 Li.
 mes remist en lautre qe ne voleit pas rescyvere, ceo *Ass., 2 ;*
 ne tournera⁶ pas en damage de nous.—*Setone, ad* *Fitz.*
idem. La substaunce de lendenture est qe le relees *Conclucion,*
 fut fait⁷ en soerte de les deners ; donques, quant le 14.]
 tendre fut fait ou la partie mesme fut, qe countrevaut
 de sa part paiement, le gros del covenant⁸ fut fait,
 issint qe le lieu nest pas a charger.—*Pult*. Quant le
 lieu ou le paiement serreit fait est⁹ assigne en
 certain, le quel celuy qe duist resceivere les deners fut
 la ou noun, al jour quant le paiement serreit fait, ceo
 ne toude ne doune, qar sil ust venu a Grantham, en
 sabsence, au jour assis,¹⁰ il ust parfourni¹¹ le covenant
 de sa part ; donques, quant illoeges il purreit aver par-
 fourni¹¹ le covenant, et ne fist pas, ceo¹² semble qe
 cest sa default, et a rien qil parle de tendre aillours
 ley ne nous mette a respoudre.—*SCHAR*. Semble a

¹ L., &c., instead of the words in brackets.

² The words of the marginal note subsequent to Assise de Novele Disseisine are from 25,184 alone. There is no marginal note in L.

³ allegge is omitted from L.

⁴ In the record there are no pleadings after the adjournment into the Common Bench. The plaintiff produces the money in Court, and after further adjournments he pro-

duces it again, and Margery accepts it. Judgment is then given as below.

⁵ 25,184, feist.

⁶ Harl., trovera.

⁷ fait is omitted from L.

⁸ L., paiement.

⁹ 25,184, fut.

¹⁰ After assis there are inserted in Harl., and 25,184, the words et tendu les deners.

¹¹ Harl., and 25,184, fourny.

¹² Harl., si.

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people it seems strange, with regard to this plea, that a simple release should be defeated by a collateral condition; but that is passed, because by the manner of the pleading it must be held to be law that such a covenant made by consent of the parties would, if it were kept, avoid the release; and it must also be held as not denied that no tender was made at the place limited in the deed, and, on the other hand that the tender was made in the place in which the creditor was found, to wit, in another place and in another county. And suppose the covenant had been in the form of a condition that the plaintiff should be with the creditor at Grantham, as one of his friends, on a certain day, to assist him with advice, even though the plaintiff had, on the same day, tendered his service at another place, that would not be a performance of the covenant; nor is it in this case.—*Grene*. The case is not similar: for, in the case which you suppose to be like, the place would be parcel of the covenant; but it is not so in this case: for in an obligation the place is never parcel of the covenant.—*KELSHULLE*. This is not an obligation, but it is at your will to pay or not, and the party will never have an action in respect of this money.—*Pulteney*. If there were no place determined with certainty in which the payment should be made, it is clear that the tender should be made where the land is, where the party is to be found, and nowhere else; but when it is determined with certainty in what place, &c., the tender must be there.—*Grene*. The place is given solely for the advantage of the person who had to pay, so that if no place had been limited with certainty he would have been able to tender in two places, and now, according to the deed, in three.—They were adjourned.

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ascun gentz merveille de ceo plee qe relees simple serreit defait par condicion de coste; mes cella est passe, qar par manere del plee il covient tener cella pur ley qe tiel covenant fait par assent des partès, sil fut tenuz, voidra le relees; et auxi covient tener a nient dedit qe tendre ne fut pas fait al lieu limite en le fait, et arreremeyn qe le tendre se fist la ou le creanceour fut trove, saver, en autre counte et en autre lieu. Et jeo pose qe le covenant ust este fait¹ qe si le pleintif ust este ove luy a Grantham a un jour des amis de luy aver eide par soun counseille, tut ust il aillours a mesme le jour tendu son service, ceo ne serra pas parfornisement² del covenant; *neque hic*.—*Grene*. *Non est simile*: qar en vostre semblaunce le lieu serreit parcelle del covenant; *sed non sic hic*: qar en obligacion le lieu nest jammes³ parcelle del covenant.—*KEL*. Ceo nest pas obligacion, mes a vostre⁴ volunte de paier ou noun, et de ceux deners partie navera jammes accion.—*Pult*. Sil ny avoit nul lieu determine en certain ou le paiement se freit, *constat* qe le tendre se freit ou la terre est ou la partie serreit trove, et noun pas aillours; mes quant il est determine en certain ou &c., la covient tendre.—*Grene*. Le lieu est seulement done en avantage de celui qe duist paier, issint qe, si nul lieu fut limite en certain,⁵ il purreit tendre en deux lieux, et ore par le fait en iij.—*Adjornantur*.⁶

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¹ fait is from L. alone.

² Harl., and 25,184, fournissement.

³ L., pas.

⁴ vostre is omitted from 25,184.

⁵ The words en certain are from L. alone.

⁶ In the old editions are added the words "*Residuum postea*," with a reference, by folio, to No. 53 of this Term according to the old numbering. That is now made to

follow. It is not, however, a continuation, but an independent and incomplete report, the conclusion being, as pointed out in the *Liber Assisarum*, in the following Trinity Term (No. 30). As there is no known MS. of Y. B. which places that conclusion in Hilary Term, and as there cannot be any certainty to which of the two reports it properly belongs, it will appear in Trinity Term, as before. Accord-

No. 8.

A.D.
1342-3.
Assise of
Novel
Disseisin.

§ Thomas de St. Hillary brought an Assise of Novel Disseisin against Margery, late wife of John de Chesterton, and complained of having been disseised of his freehold in Redmile and Bottesford.¹—*Pulteney*. There ought not to be an assise, for we tell you that Thomas, by this deed which is here, released all the right that he had in the same tenements now put in view, and we demand judgment whether, contrary to his own deed by which his right is extinguished, he ought to have this assise against us.—*Grene*. To that we say that you cannot bar us from this assise by that release, because we tell you that yourselves, by this deed indented which is here, granted that, if we paid you £50, on the Monday next after the execution of this indenture, at Grantham, the release should then be held as null; and we tell you that on the day aforesaid we came to Grantham ready to pay the £50, when this same John did not come, nor did any other person on his behalf come, to receive the payment aforesaid. And it was given us to understand that he would be found at Redmile in the county of Leicester, wherefore we approached him there, and there tendered payment, and he refused it; and again see here the money ready to be paid. And we demand judgment whether, contrary to the conditions in this indenture, which we have performed as far as in us lies, you can bar us from this action.—*Pulteney*. Now we demand

¹ The names of the places are from the record.

No. 8.

§ Thomas¹ de Saint Hillarie porta une Assise de Novele Disseisine vers Margerie qe fuit la femme Johan de Chestretone,² et se pleint estre disseisie de son franktenement en W., R. &c.³—*Pulten.* Assise ne doit estre, car nous vous dioms qe T., par ceo fait qe cy est, releassa tout le dreit qil avoit en mesmes les tenements ore mis en view, et demandoms jugement si encountre son fait demene par quel son droit est esteint, deit il devers nous ceste assise aver.—*Grene.* A ceo dioms nous qe par cel relees ne poies nous de ceste assise forclore, car vous dioms qe vous mesmes, par ceo fait endente qe cy est, grauntastez qe si nous vous paiames L.⁴ li. Lundy prochain apres la confeccion de ceste endenture, a Grantham, qe adonques le relees serreit tenus pur nul; et dioms qe al jour avantdit nous venissoms a Grantham prest daver paye les L.⁴ li., ou mesme cesty Johan⁵ ne vient pas, ne nul pur luy, de recevoir le paiement avantdit. Et nous fuit fait entendre qil serreit trove a R. en le Counte de Leycestre, par quei nous illoeqes approcheames, et la tendimes le paiement, et il le refusa; et uncore veies cy les deners cy prest a paier. Et demandoms jugement si, encountre les condicions en ceste endenture comprises, les queux nous eioms parfourni en tant qe en nous est, poies nous de ceste accion barrer.—*Pulten.* Ore demandoms

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1342-3.

Assise de

Novele

Disseisine.

ing to the record of Hilary Term, the conclusion of the case in the Common Bench, after some adjournments, was as follows:—"Et idem Thomas de Sancto Hillario profert hic denarios prædictos, qui liberantur hic in Curia prædictæ Margeriæ, quæ illos hic recepit; per quod videtur Curia hic quod prædictum scriptum quietclamancie vacuum est et annullatum per prætensiones et receptionem denariorum prædictorum. Et ideo consideratum est quod prædictus Thomas de Sancto Hillario recuperet inde

"seisinam suam versus eam, et eadem Margeria in misericordia &c. Nihil de damnis, &c., quia prædictus Thomas de Sancto Hillario gratis ea remittit," &c.

¹ This report of the case appears as No. 53 in the old editions. The note on the second report of No. 5 (p. 17, Note 4) is applicable also to this.

² Ebstone in the old editions.

³ R., &c., is omitted from the old editions.

⁴ XX. in the old editions.

⁵ Margerie in the old editions.

No. 8.

A.D.
1342-3.

judgment since he has confessed the release by which his right is extinguished ; and, as to the condition of which he speaks, you see plainly how the indenture which witnesses the condition purports that the payment was to have been made at Grantham on a certain day, and he has himself confessed that he has not shown that he tendered payment at Grantham on the appointed day in accordance with the words of the indenture, and thus he has not performed the condition ; wherefore judgment how we ought to depart.—*Seton*. When such a deed is founded upon a condition, the law ought to have regard to the manner in which the condition arose ; now the foundation of this condition is the payment which had to be made to John de Chester-ton, for it was to him that we were bound ; and, although the place at which the payment should be made is included in the indenture, that is solely for our convenience ; therefore, when we waive that convenience, and tender the money to the person to whom we are bound, in whatsoever place he may be found, that is sufficient for us, and we are now in that same case ; and, since you do not deny that we proffered payment to you, on the appointed day, at Redmile, where you were found, we demand judgment.—*Pulteney*. In case no certain place at which the payment was to be made had been contained in the indenture, your reasoning would hold good, that is to say, that the payment should be made in whatsoever place the person to whom you were bound could be found ; but now, in this case, there is a certain place for payment comprised in the indenture, and if you had tendered the money at that place on the day appointed by the indenture, that tender would have stood in place of payment, although John had not been there, as much as if he had been there ; therefore, as you did not make any tender of the money at that place, but you did tender at another place, at which you had no warrant to do so by the indenture, it seems that you have not in any way performed the condition, and consequently the release

No. 8.

jugement del houre qe il ad conu le relees par quel son dreit est esteint; et quant al condicion de quele il parle, vous veies bien coment lendenture qe tesmoigne la condicion voet qe le paiement duist estre fait a Grantham a certain jour, et il ad mesme conu qil nad pas moustre qe al jour assigne il tendi le paiement a Grantham auxi come lendenture voet, et issint nad il pas parfourni la condicion; par quei jugement coment nous devoms departir.—*Setone*. Quant un tiel fait est foundu sur une condicion, la ley doit prendre regarde a ceo qe la condicion prist sa nesaunce; ore le foundement de cele condicion cy est le paiement quel duist estre fait a Johan,¹ car a luy nous sumes oblige; et coment qe le lieu ou le paiement serreit fait est compris deins lendenture, ceo est pur ese de nous soulement; donques, quant nous weivoms cel ese, et tendoms les deners a la persone a qi nous sumes oblige, en quel lieu qil soit trove, assez nous suffist, et ore sumes nous en mesme le cas; et del houre qe vous ne dedites pas qe nous vous profrimes le paiement, al jour assigne, a R., la ou vous fustes trove, par quei jugement.—*Pult.* En cas qe nul certain lieu ou le paiement serreit fait fuit contenu en lendenture, vostre resoun liereit, saver qe le paiement serreit fait en quel lieu qe la persone puit estre trove a qi vous fuistes oblige; mes ore, en cest cas, il ad certain lieu de paiement compris deins lendenture, en quel lieu si vous usses tendu les deners al jour assigne par lendenture, cel tendre ust este auxi bien come le paiement, mesqe Johan¹ nust pas este la illoques, come si il ust este la; donques, quant vous ne fistes nul tendre de les deners a cel lieu, eins vous tendistes a autre lieu, a qi vous naviez pas garrant a faire par lendenture, il semble qe vous navez pas de rien parfourni la condicion, et *per consequens* relees

A.D.
1342-3.¹ Margerie in the old editions.

No. 9.

A.D.
1342-3.

remains in its force.—*Grene*. We had warrant to tender the money at Redmile, for in every case in which such a deed is made in defeasance of a release, or of a deed of feoffment, as it is here, it shall be at the option of the person who has become bound to make the payment or perform the condition in whatsoever place the person can be found, or else to tender payment at the place comprised in the deed; therefore, although in this indenture a certain place is mentioned for the payment, that does not defeat the tender made at the place at which the person was found; for suppose that, when we tendered you the money at Redmile, you had accepted it, the release would have been void, and consequently the tender made there is not void but sufficiently good.

An Essoin on the King's service was quashed after the return of the *Petit Cape*, because the same person was essoined by a like essoин which was not yet warranted. This is in accordance with the practice relating to such essoин.

(9.) § Note that, at the return of the *Petit Cape* against a woman, she was essoined as being on the King's service.—*Thorpe*. The essoин does not lie: for heretofore she was essoined as being on the King's service, and did not bring her warrant, for which reason the *Cape* issued, and so the essoин does not lie now unless she shows the warrant for the first essoин; and therefore we pray seisin of the land.—*SHARSHULLE*. If on the other day, when she had a day by the first essoин, she was imprisoned, which was no default of hers, and now she is on the King's service, it would not be right that she should be put to loss or damage, inasmuch as she will, perhaps, hereafter show a warrant for both essoins, and save the default, on the ground, peradventure, that she was imprisoned.—*Thorpe*. The essoин does not lie if the first was not warranted: for in no case shall

No. 9.

demoert en sa force.—*Grene.* Nous avioms garrant de tendre les deners a R., car en chescun cas la ou tiel fait est fait en defesaunce dun relees, ou dun fait de feffement, come il est cy, il serra en eleccion de celuy qe est oblige ou de faire le paiement ou la condicion en quel lieu qe la persone poet estre trove, ou autrement de tendre le paiement al lieu compris deins le fait; donques, coment qe en ceste endenture certain lieu de le paiement est compris, ceo ne defet pas le tendre fait al lieu ou la persone fuit tröve; car jeo pose qe, quant nous vous tendimes les deners a R., si vous les usses resceu, le relees ust este voide, et *per consequens* le tendre fait la nest pas voide mes assez bon, &c.

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1342-3.

(9.) ¹ § *Nota* qe, al Petit *Cape* retourne vers une *Essone* de femme, ele fut *essone* de service² le Roi.—*Thorpe.* Roy apres *Lessone* ne gist pas: qar autrefoitz ele fuit *essone* de service le Roi,⁴ et ne porta pas son garrant, par quei *Cape* issist, et issi ne gist pas *lessone* a ore, sil ne moustre⁵ garrant del primer *essone*; par quei nous prioms *seisine* de terre.⁶—*SCHAR.* Si ele fut, a lautre jour, quant ele avoit jour par le primer *essone*, enprisone, qe ne fut pas sa default, et a ore est en le service le Roi, il ne serreit pas resoun qele fut⁷ mys en⁸ perde ne damage, desicome apres ces heures par cas ele moustra garrant del un et del autre *essone*, et sauvera la default, par taunt qele paraventure fut enprisone.—*Thorpe.* *Lessone* ne gist pas si le primer ne fut garranti: qar en nul cas

Essone de service le Roi. Roy apres le Petit *Cape* retourne fut quasse, pur ceo qe mesme la persone fuit *essone* de autiel *essone* quele nest mye *uncore* garrantie. *Ad hoc condordat modus talis* *essonii.*² [Fitz., *Essone*, l.]

¹ From L., Harl., and 25,184.

² The marginal note is from 25,184 alone, L. having the words *Essone* de service le Roy, but in a later hand.

³ The words de service are omitted from Harl.

⁴ The words de service le Roi are from L. alone.

⁵ 25,184, moustrast.

⁶ The words de terre are from L. alone.

⁷ L., soit.

⁸ L., a.

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1342-3.

one have essoin after essoin on the King's service, unless the first essoin was warranted.—SHARDELOWE. Yes, one shall have it: for suppose that, on the day which the party had by the first essoin, the parol had for any reason demurred without day, on the re-summons he could have been essoined anew on the King's service.—*Thorpe*. It would be so in the case of a common essoin, because the parol is not continued, but, where the process is continued, essoin after essoin on the King's service does not lie, unless the first essoin is warranted; and it is not right that she should gain any greater advantage from her default which she made on the last day than if she had then appeared.—SHARSHULLE. Since both essoins may possibly be warranted, and she is now possibly on the King's service, and her default may possibly be saved, it is not right that seisin of the land should be awarded.—*Thorpe*. Then it will follow that on another day she will make default, and not bring her warrant, and the *Cape* will issue anew, and so *in infinitum*, for seisin of land cannot be awarded immediately after essoin.—SHARSHULLE. Seisin will be awarded on another day, if she do not appear.—And afterwards HILARY by judgment quashed the essoin, and caused the woman to be called, and she did not appear, but one W. del Isle came, and said that she had only a term for life, by his lease, and prayed to be admitted to defend his right.—*Thorpe*. The fourth day has passed, so that he has outstayed his time.—And this exception was not allowed, &c.

No. 9.

avera homme essone apres essone¹ de service le Roi, si le primer essone ne fut garranti.—SCHARD. Si avera homme : qar mettez qe, a jour qil avoit par le primer essone, la paroule par ascune cause ust demure saunz jour, a la resomons il purreit aver este essone derechief de service le Roi.—*Thorpe*. Auxi serreit de comune essone, pur ceo qe la paroule nest pas continue, mes, ou le proces est continue, essone² apres essone de service le Roi ne gist pas, si le primer essone ne soit³ pas⁴ garranti ; et il nest pas resoun qele eit avantage de sa defaut qele fist al darrein jour, plus⁵ qe si ele ust apparu adonques.—SCHAR. Quant les deux essones pount estre garrantis, et ore par cas ele est en service le Roi, et sa defaut purra estre salve, nest⁶ pas resoun qe seisine de terre⁷ soit agarde.—*Thorpe*. Donques ensuera qe a⁸ un autre jour ele fra defaut, et ne portera pas⁹ soun garrant, et *Cape* issera¹⁰ derechief, et *sic in infinitum*, qar homme ne poet pas immediate apres essone agarder seisine de terre.⁷—SCHAR. A un autre jour seisine serra agarde, si ele ne veigne.—Et puis HILL. par agarde quassa lessone, et fist demander la femme, qe ne vient pas,¹¹ mes un W. del¹² Isle¹³ vint, et dit¹⁴ qele nad forsque a¹⁵ terme de vie de soun lees, et pria destre resceu a defendre soun dreit.¹⁶—*Thorpe*. Le quart jour est passe issint qil ad soursis son temps.—*Et non allocatur &c.*

A.D.
1342-3.

¹ The words apres essone are omitted from Harl.

² essone is omitted from L.

³ Harl., and 25,184, fut.

⁴ pas is omitted from L.

⁵ Harl., puis.

⁶ L., par quei il nest.

⁷ The words de terre are from L. alone.

⁸ a is omitted from L.

⁹ pas is omitted from 25,184.

¹⁰ 25,184, istra.

¹¹ L., poynt.

¹² L., de la.

¹³ 25,184, Pole.

¹⁴ Harl., dist.

¹⁵ a is from L. alone.

¹⁶ The words a defendre soun dreit are omitted from 25,184.

Nos. 10, 11.

A.D.
1342-3.
Process on
Statute
Merchant.
And see
where, on
like
matter,
execution
of a recog-
nissance
could not
be dis-
turbed, to
wit,
Michael-
mas Term
in the 6th
year.¹

(10.) § A recognisance on statute merchant was made by several persons to Nicholas Inkepenne, and, on a certificate returned into the Chancery, he had a writ to take their bodies returnable now, and the Sheriff had not executed it.—*Thorpe*. You have here the defendants, who tell you that by this indenture Nicholas granted that, if the defendants should pay certain money, &c., the recognisance should lose its force, and we tell you that they did pay, &c.; and we do not understand that he ought to have execution contrary to his deed.—*Pulteney*. They have not a day now, and you have no warrant to hold plea between us without a writ from the Chancery; wherefore we pray execution, and that the defendants be committed into custody.—*Thorpe*. Before judgment and award of execution they can and they have warrant to hear the plea: for if we had an acquittance of the debt there is no doubt that we could plead it, but if execution had been awarded it would be necessary to sue a writ from the Chancery, and this deed, together with that which we allege collaterally, is as good in effect as an acquittance would be.—*SHARSHULLE*. Perhaps you might be able to plead an acquittance, but the indenture falls under the head of covenant, to try which we have no warrant.—*R. Thorpe*. It is right that they should plead to this deed.—And they did so.

*Audita
Querela,
out of the
Chancery,*

(11.) § Note that on a statute merchant a certificate was sued in the Chancery, upon which a *Capias*

¹ Y. B., Mich., 6 Edw. III., No. 53, fo. 53.

Nos. 10, 11.

(10.) ¹ § Reconnaissance sour estatut marchaunt fut A.D. 1342-3. Procès sur estatut marchaunt. Et vide ou, sur tiele matere, execucion dune reconis- saunce ne pout mye estre destourbe, saver M. vj.² [Fitz. Execucion, 50.]
 fait par plusours a Nichole Inkepenne, et, sour certifica-
 cioun retourne en la Chauncellerie, il avoit bref de prendre
 lour corps retournable a ore,³ et le Vicounte navoit
 pas fait execucion.—*Thorpe*. Vous avez cy⁴ les de-
 fendants, qe vous diount qe par ceste endenture
 Nichole graunta qe si les defendants paissent certeinz
 deners, &c., qe la reconnaissance perdreit sa force,
 et vous dioms qils paierent,⁵ &c.; et nentendoms pas
 qen countre son fait execucion deive aver.—*Pult*.
 Ils nount pas jour a ore, et vous navez pas garraunt
 a tener plee entre nous sanz bref de la Chauncel-
 lerie; par quei nous prioms execucion, et qe les
 defendants soient mys⁶ en garde.—*Thorpe*. Avant
 jugement et execucion agarde il pount et ount gar-
 raunt doyer plee: qar si nous ussoms acquitaunce de
 la dette nest pas doute qe nous nel⁷ pledroms, mes
 si execucion fut agarde, il covendreit suer⁸ bref de
 la Chauncellerie, et auxi bon en effect est ceo fait
 ove ceo qe nous alleggeoms de coste come serreit
 acquitaunce.—*SCHAR*. Acquitaunce puissez, par cas,
 pleder, mes lendenture chiet en covenant, a quel⁹ trier
 nous navoms pas garraunt.—*R.*¹⁰ *Thorpe*. Il est resoun
 qils pledassount¹¹ a ceo fait.¹²—*Et ita fecerunt*.

(11.) ¹³ § *Nota*, qe sur estatut marchaunt certificacion *Audita Querela*
 fut suwy en la Chauncellerie, hors de quele *Capias* hors

¹ From L., Harl., and 25,184.

² The marginal note is from 25,184 alone. In L. it is *Nota*, in Harl., Statut Marchant.

³ The words a ore are omitted from L.

⁴ cy is omitted from L.

⁵ L., paierunt.

⁶ 25,184, comandenz.

⁷ Harl., ne; the word is omitted from 25,184.

⁸ Harl., suyre; 25,184, suwer.

⁹ L., quel chose.

¹⁰ R. is omitted from L.

¹¹ Harl., and 25,184, bien qils pledent, instead of resoun qils pledassount.

¹² fait is omitted from Harl.

¹³ From L., Harl., and 25,184, but compared with the record, *Placita de Banco*, Hil. 17 Edw. III., R^o 399 d. It there appears that the *Audita Querela* was sued by John de Hardeshulle, knight, Robert Pavely, knight, Nicholas de Burneby, knight, and John de Waldegrave, the elder, against the Abbot of Northampton.

No. 12.

A.D.
1342-3.
was
returned
into the
Bench,
upon
which a
*Venire
facias*
issued,
and in the
*Venire
facias* was
the clause
of *Super-
sedeas*.

against the recognisor issued to the Sheriff, and a writ to give livery of his land returnable at the Quinzaine of Easter next to come; wherefore the recognisor went into the Chancery, and showed a collateral indenture made between the parties in defeasance of the statute merchant, and prayed a writ to cause the recognisee to come to show cause why he sued contrary to his own deed, and the recognisor had an *Audita Querela* directed to the Justices, upon which writ he prayed a *Venire facias*.—HILARY. A *Venire facias* ought, in this case, to be warranted by some record as well as this writ of *Audita Querela*; and you say yourselves that the writ of execution is not yet returned, and therefore we cannot know whether such suit has been made or not.—And, notwithstanding this, because of the mischief that the party would, in the mean time, be imprisoned, and out of his land by execution, a *Venire facias* issued, and with the clause of *Supersedeas*.

Assise of
Darrein
Present-
ment in
which it
was
adjudged
that,
where an

(12.) § Theobald de Greneville brought an Assise of Darrein Presentment, in respect of the church of Kilkhampton, against John de Ralegh and Amy his wife.—*Moubray*. Henry de Greneville was seised of one acre of meadow to which the advowson of

No. 12.

vers le reconissour¹ issit al Vicounte, et bref de A.D. 1342-3.
 liverer sa terre retournable a la xv. de Pasche de quel
 proscheine a venir; par quei le reconissour² ala en Venire
 la Chauncellerie, et moustra endenture de coste fait facias
 entre les parties en defesaunce⁴ de lestatut, et pria issit,
 bref de faire venir, &c., par quei il suist countre hors de la
 son fait, et avoit *Audita Querela* as Justices, hors Chauncel-
 de quel bref il pria *Venire facias*.—HILL. *Venire* lerie, fut
facias en ceo cas covendreit estre garranti dascun retourne
 recorde auxi bien come de ceo bref *Audita Querela*; en Bank,
 et vous dites mesmes qe le bref dexecucion nest pas Venire
 uncore retourne, par quei nous ne poms saver si sedeas.³
 tiele suite soit faite ou noun.—Et, non obstante, pur [Fitz.,
 le meschief qe la partie, en le mene temps, serreit Execucion,
 enprisonne, et hors de sa terre par execucion, *Venire*
facias issit, et ove la clause de *Supersedeas*.⁵ 51.]

(12.) ⁶ § Thebaud⁷ Greneville porta Assise de derrein *Assisa*
 presentement del eglise de Kilkamptone vers Johan *Ultima*
 Raly⁸ et Amye⁹ sa femme.—*Moubray*. Henre Grene- *Presenta-*
 ville fut seisi dune acre de pree a quei lavowesoun tionis, ou
 fut juge qe la ou une

¹ L., conissour.

² The marginal note is from 25,184 alone. In L., it is *Nota*, in Harl., Statut Marchaunt.

³ L., and 25,184, conissour.

⁴ The defesaunce was, according to the record, "in quodam scripto chirographato inter prædictum Abbatem ex parte una, et præfatum Johannem de Hardeshulle et Matiludem uxorem ejus et Rogerum Chaunceux personam tertie partis ecclesie de Rode ex altera, sub certis conditionibus in eodem scripto contentis confecto."

⁵ L., ove la clause de *Supersedeas* fut graunte, instead of issit, et ove la clause de *Supersedeas*.

After the enrolment of the writ of *Audita Querela* there appear, on the roll, only the words follow-

ing:—"Et super hoc veniunt prædicti Johannes, Robertus, Nicholaus, et Johannes, et petunt breve de Venire facias prædictum Abbatem, &c. Et eis conceditur returnabile hic a die Pasche in tres septimanas. Et interim cesset executio, &c."

⁶ From L., Harl., 22,552, and 25,184, until otherwise stated, but corrected by the record *Placita de Banco*, Hil. 17 Edw. III., R^o 28 d. It there appears that the assise was brought by Theobald de Greneville against John de Ralegh, of Charles, (Devon) and Amy his wife, in respect of a presentation to the church of Kilkhampton (Cornwall).

⁷ 25,184, Thebaund.

⁸ L., Rale.

⁹ L., Agnes.

No. 12.

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1342-3.
advowson
was that
of a hus-
band and
his wife in
jointright,
though
only for
their lives,
by the
alienation
of one
acre of
meadow,
parcel of
the same
manor [to
which the
advowson
was
append-
ant] with
the advow-
son, the
advowson
was im-
mediately
made dis-
appendant
to the
residue of
the manor.
And so
note as to
the
husband's
deed.

Kilkhampton is appendant, and presented Thomas de Stapeldone, through whose death the church is now void. From Henry the right descended to Theobald, the present plaintiff, as to son and heir; and we pray the assise.—*Pulteney*. We do not admit the appendance to the acre of meadow, &c.; and we tell you that the advowson of Kilkhampton is appendant to the manor of Kilkhampton, and of that manor one Richard de Greneville was seised. From Richard the right descended to Bartholomew, who entered, and presented, and assigned a third part of the manor, with the third turn, &c., to Katharine wife of Richard his brother, and afterwards by fine aliened the two other parts, and granted the reversion of the third part of the manor, and took back an estate of the whole manor in demesne and reversion to himself and Amy his wife, who is now the wife of John against whom the writ is brought, for their lives, with remainder over, and afterwards Bartholomew and his wife presented one, &c., and the presentation from which the plaintiff takes his title was an usurpation while Amy was covert and on the turn of Katharine tenant in dower; and we tell you that Katharine is dead, and we are in by virtue of the reversion, &c.; and we tell you that Theobald who brings the writ has released all his right in the manor, except a certain rent seck; and thus we are seised of the manor to which, &c., and so it belongs to us at present; and

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de K. est appendant,² et presenta A.³ par qi mort A.D. 1342-3.
 leglise est ore voidé. De H. descendi le dreit⁴ a Thebaud qore se pleint come a fitz et heir; et prioms lassise.—*Pult.* Nous conissons pas⁵ lappendance al acre de pree,⁶ &c.;⁷ et vous dioms qe lavowesoun de K. est appendant al maner de Kilkamptone, et de cel maner fuit un Richard de Greneville seisi. De Richard descendi le dreit⁴ a B., qentra, et presenta, et assigna la tierce partie del maner ove le tierce tourne, &c., a Katherine la femme Richard son frere,⁸ et puis par fyn⁹ aliena les deux parties, et granta la reversion de la tierce partie del maner, et reprist estat de tut¹⁰ le maner en¹¹ demene et¹² reversion a luy et a Amye¹³ sa femme,¹⁴ qest ore la femme Johan vers qi le bref est porte, a lour vies, et le remeindre outre, et puis B.¹⁵ et sa femme presenterent un, &c., et le presentement de quei le pleintif¹⁶ prent son tittle ceo fut purprise quant A. fut coverte et en le tourne K. tenante en dower; et vous dioms qe K. est morte, et nous sumes einz en la reversion, &c.; et vous dioms qe T.¹⁷ qe porte le bref ad relesse tout son dreit en le maner, forspris certain rente sek; et issint sumes seisi del maner a quei, &c., issint¹⁸ appent a nous a presenter; et

¹ The marginal note is from 25,184 alone. In L., and Harl., it is *Aassise de drein presentement* only.

² The record *pertinet*, for est appendant.

³ The record Thomas de Stapeldone.

⁴ The words le dreit are from L. alone.

⁵ pas is omitted from 25,184.

⁶ The words de pree are omitted from Harl.

⁷ In the record are added the words "*nec quod prædictus Theobaldus seisitus sit de eodem præto.*"

⁸ MSS. of Y.B., pere.

⁹ It does not appear in the record that this alienation was by fine.

¹⁰ L., del, instead of de tut.

¹¹ L., del.

¹² L., de la.

¹³ L., Agnes.

¹⁴ This is better stated in the other report, below.

¹⁵ 25,184, Richard.

¹⁶ L., il, instead of le pleintif.

¹⁷ Theobald's father Henry according to the record, and the other report below.

¹⁸ L., issynt.

avoeson
 fut le baron et sa femme en dreitjoyn, et uncore forsque pur lour vies, qe par alienacion dun acre de pree parcelle de mesme le maner ove lavoeson ant lavoeson fut faite desappendante al remenant du maner. *Et sic nota del fet le baron.¹ [Fitz., Darren Presentment, 9.]*

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we demand judgment whether there ought to be an assise, and we pray a writ to the Bishop.—*Moubray*. That plea is threefold: one is that the advowson is appendant to the manor of which they are seised, and consequently not to the acre of meadow; the second is the fine and the usurpation, &c.; and the third is our own deed; wherefore we pray the assise.—*Thorpe*. Whether the advowson be appendant or in gross is not to the purpose, in Darrein Presentment, because the last presentation is alone the title: for even though I had said that the advowson is not appendant to the acre of meadow, if the last presentation were admitted, you would have a writ to the Bishop, unless that presentation were avoided; it is therefore absolutely necessary to avoid the last presentation, and further, in order to have a writ to the Bishop, to show our title; and that we have done.—*SHARSHULL*. The assise shall not be taken out of its course except by reason of some certain plea to which the party can have an answer; and suppose that he were to make a title as to an advowson in gross, would it not be a good answer to say that he presented as being appendant to the manor of Kilkhampton, of which you are seised, and that it thus belongs to you to present? And that would make an issue as to whether the advowson were in gross or appendant.—*Thorpe*. Sir, our plea is of a nature, whether the advowson be in gross or appendant, to avoid his presentation, and to affirm our right by a higher title; and if he took four or more presentations for his title by way of action, we should have to answer as to all of them, and issue would be joined only on one; and we shall have the same advantage against him of affirming our

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demandoms jugement si assise deive estre,¹ et prioms bref al Evesqe.—*Moubray*. Ceo plee est treble:² un est qe lavowesoun est appendante al maner dount ils sount seisis, et *per consequens*³ noun pas al acre de pree; autre est la fyn et la purprise, &c.; et le tierce nostre fait demene; par quei nous prioms lassise.—*Thorpe*. Le quel il soit appendant ou⁴ gros nest pas a purpos derrein presentement, qar le derrein presentement est soulement le⁵ title: qar mesqe jeo usse dit qe nient appendant al acre de pree, si le derrein presentement fut conu, vous averez bref al Evesqe si ceo ne⁶ fut⁷ voide; donques *necessario* il covient voider le derrein presentement, et outre, pur aver bref al Evesqe, moustrer nostre title; et ceo avoms fait.—*SCHAR*. Lassise⁸ ne serra mye prise⁹ hors de son cours¹⁰ forsqe par un certain plee a quai partie poet aver respouns; et jeo pose qil feist¹¹ title come un gros, ne serreit ceo¹² bon respouns qil presenta come appendant al maner de K.,¹³ de qi vous estes seisi, et issint appent a vous a presenter? Et cella freit issue le quel ceo fuit gros ou appendant.—*Thorpe*. Sire, nostre plee est tiel,¹⁴ soit il gros ou appendant, de voider son presentement, et affermer nostre droit par title plus haut;¹⁵ et sil prist iij ou plus de¹⁶ presentements pur title par voie daccion, il nous covendreit respoudre a touz, et issue se freit forsqe sur un; et mesme¹⁷ lavantage averoms¹⁸ nous vers luy daffermer nostre

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1342-3.¹ 25,184, aver.² L., double.³ The words *per consequens* are omitted from L.⁴ L., al.⁵ le is omitted from L.⁶ ne is omitted from 25,184.⁷ 25,184, fust.⁸ L., Si lassise.⁹ 25,184, mys, instead of mye prise¹⁰ L., soun certeyn course, instead of son cours.¹¹ All the MSS. except Harl., fait.¹² 25,184, ceo, Sire.¹³ The words de K. are omitted from Harl.¹⁴ tiel is from L. alone.¹⁵ 25,184, haunt.¹⁶ L., plusiurs instead of plus de.¹⁷ Harl., and 25,184, a mesme.¹⁸ Harl., serroma.

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title by several presentations in ourselves, or in those whose estate we have, and he will be put to answer to all.—*STONORE*. If the advowson be not appendant to the manor, what right do you affirm in yourselves? as meaning to say none.—*Moubray*. We do not admit the fine, nor the deed, &c. And it is quite true that Bartholomew de Greneville was seised of the manor of Kilkhampton, to which the advowson is appendant, and presented as he supposes; and we tell you that he gave the acre of meadow which was parcel of the manor, together with the advowson, to Henry our father, and Henry presented, &c., and on the death of Henry's presentee the church is now void, and so it belongs to us to present; and we pray a writ to the Bishop. And as to William de Kaynes, whom they allege to have been admitted, and instituted by the Bishop, on the presentation of Bartholomew and Amy his wife, he was not admitted; and we pray the assise in respect of our damages.—*SHARSHULLE*. Either you must pray the assise on your title and abide judgment on that, or else, if you will, take the traverse that W. de Kaynes was not admitted on the presentation of Bartholomew and Amy, and take that averment out of the course of assise in the nature of an inquest.—*Seton*.

In this
plea
SHARSHULLE said
that in this
writ the
seisin of
the acre is
of no im-
portance
to the
plaintiff
for the
purpose of
compel-
ling the
taking of
the assise,

This presentation by Bartholomew and Amy is immaterial, because the last presentation is admitted for us, and it does not lie in the mouth of any one to say that this was an usurpation except in the mouth of one who could show that he had a right at the same time; now he cannot say that on the ground that they have conveyed the manor to which, &c., to themselves, because we have a right by the purchase of the acre of meadow and the

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title par plusours presentements en nous mesmes, ou en¹ ces² qi estat nous avoms, et il serra mys a respoundre a touz.—STON. Si lavowesoun ne soit appendant al maner, quel dreit affermez vous en vous mesmes? *quasi diceret* nulle.—Moubray. Nous conissons pas la fyn, ne le fait, &c. Et bien est verite qe Bartelmewe de³ Greneville fut seisi del maner de K., a quai lavowesoun est appendant, et presenta come il suppose; et vous dioms qil dona lacre⁴ de pree qe fut parcelle du maner; ensemblement ove lavowesoun, a H. nostre pere, et il presenta, &c., par qi mort leglise est ore voides, issint appent a nous, &c.; et prioms bref al Evesqe. Et quant a W. [de Kaynes]⁵, qils diount estre resceu, et institut Devesqe⁶, al presentement B. et Amye⁷ sa femme,⁸ il ne fut pas resceu; et prioms lassise pur damages.—SCHAR. Ou il covient qe sur vostre title vous priez lassise et demurez sur cel, ou autrement, si vous voillez, estre a travers qe W. ne fut pas resceu al presentement B. et Amye, et prendre cel⁹ averement hors de cours¹⁰ dassise en nature denqueste.—Setone.¹¹ Cel presentement B. et Amy ne toude, ne doune, qar le derrein presentement nous est conu, et il gist en nully bouche a dire que ceo fut purprise forsqe en bouche de celui qe purreit moustrer qil avoit dreit a mesme le temps; ore ne poet il dire cela par cause qils ount conveie le maner a qi, &c., en eux, pur ceo que nous avoms dreit par le purchace del acre de pree¹² et lavowesoun

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In isto placito dixit Schar. qe la seisine del acre en cestuy bref ne toude ne doune al pleintif de chacer assise,

¹ en is from L. alone.

² Harl., ses.

³ de is from L. alone.

⁴ L., un acre.

⁵ The words de Kaynes are from the record.

⁶ Harl., del Evesqe.

⁷ L., Agnes.

⁸ The words et Amye sa femme are omitted from Harl.

⁹ L., sour cel.

¹⁰ L., course.

¹¹ 25, 184, *Moubray*.

¹² L., and Harl., de la terre, instead of del acre de pree.

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because
this writ is
of such a
nature
that who-
ever pre-
sented the
last
parson,
whether
rightfully
or wrong-
fully, shall
have the
presenta-
tion, un-
less the
other
party can
show that
this was
an usurpa-
tion, or
that he has
some
reason of
more
recent
date, for
the words
of the writ
are *quis
advocatus
presenta-
vit per-
sonam
ultimam*,
&c., so
that this
writ is not
brought by
reason of
the right
one has to
it when

advowson higher up, so that in relation to us who had a right at the same time this cannot be an usurpation; wherefore we pray the assise.—**SHARS- HULLE.** In God's name, then, do you waive all the rest? —**Pole.** We cannot waive it: for when they confirm their right and possession by a presentation higher up than our title, thus showing that they had a right in the advowson before we presented, in order to put themselves in such a position that they could avoid our title on the ground of usurpation, we must have an answer to that; and we say that, immediately after the death of R. de Greneville who was presented by Bartholomew de Greneville, our ancestor presented Thomas de Stapeldone, upon whose death the church is now void; and we say, as above, that our ancestor was enfeofed of the acre of meadow, &c.—[*W.*] *Thorpe.* That plea is double—one in fact, the other in law: for even if we were willing to maintain that Amy and her first husband presented William de Kaynes, they would go back and say that they were seised of the acre to which, &c., and would abide judgment in law, on our non-denial, whether it should not belong to them to present.—*R. Thorpe, ad idem.* If he means to say that, although Amy and her first husband presented, through the alienation by the husband of the acre of meadow and the advowson at a later time, the woman will be put to her action by *Cui in vita*, and that, inasmuch as she is out of possession, avoidance on the ground of usurpation does not lie in her mouth, it is

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de¹ plus haut, issint qe devers nous² qe avioms³ A.D. 1342-3.
a mesme le temps dreit ceo ne poet estre purprise;
par quei nous prioms lassise.—SCHAR. De par Deux,⁴ qar cesty
donques,⁵ weivez vous⁶ le remenant?—Pole. Nous ne bref est de
le poms pas weyver: qar quant ils afforcent⁷ lour qe celui
dreit et possession par presentement de plus haut qe qe pre-
nostre tittle nest, issint moustraunt qils avoient⁸ dreit sente la
en lavowesoun avant qe nous presentames,⁹ pur les¹⁰ fut ceo a derreine
faire tieux qils purreint voider par purprise nostre persone,
tittle, il covient qe nous eioms a ceo respouns; et avert le
dioms¹¹ qapres la mort R. Greneville presente par presente-
Bartelmewe G. immediate nostre auncestre presenta ment, si
Thomas de Stapeldone,¹² par qi mort leglise est ore ne soit qe
voide; et dioms, *ut supra*, qe¹³ nostre auncestre fut lautre
feffe del acre de pree, &c.—Thorpe. Ceo plee est purpris, ou
double: un en fait, lautre en ley: qar tout vouldroms qil eit
meintener qe Amye¹⁴ et son primer baroun presen- cause de
terent William Keynes; ils resortirount et dirront punse
qils fuissent¹⁵ seisiz del acre a quei, &c., et demoreront temps, qar
en jugement en ley, sur nostre nient dedire, si a cesty voet
eux nappendreit a presenter.—R.¹⁶ Thorpe, *ad idem*. *quis*
Sil soit¹⁷ de tiele¹⁸ entente qe tout presenterent *advocatus*
Amye¹⁴ et son primer baroun qe par lalienacion del *præsentia-*
baroun del acre de pree¹⁹ et lavowesoun de puisne *vit per-*
temps, la femme serra mys a saccion par²⁰ *Cui in vita*, *sonam*
et par tant qele est hors de possession qe voidance *ultimam*,
de purprise ne gist pas en sa bouche, par quei il *&c.*, issint
ad [a] cella

¹ de is omitted from L.² nous is omitted from L.³ L., aveymes.⁴ 22,552, Dieux.⁵ donques is omitted from L.⁶ L., weyvoms, instead of weivez

vous.

⁷ 25,184, forcent.⁸ 22,552, avons.⁹ Harl., les presentames.¹⁰ L., nous; 25,184, lees.¹¹ 25,184, nous dioms.

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¹² MSS. of Y.B., Stapeltone.¹³ qe is omitted from Harl.¹⁴ L., Agnes.¹⁵ 25,184, feussent.¹⁶ R. is omitted from 22,552.¹⁷ 22,552 and 25,184, ils sont, in-
stead of sil soit.¹⁸ Harl., tittle, instead of tiele.¹⁹ The words de pree are omitted
from L. and Harl.²⁰ 22,552, de.

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the avow-
son is
append-
ant, as in
the case of
a *Quare
impedit*,
but is
given on
the ground
of the
possession
of a pre-
sentation.

then necessary to know to what point they are pleading.—SHARSHULLE. On that which you say about appendance on either side we hardly lay any stress: for we hold the person who presents to be patron, until that presentation is avoided; therefore, if Bartholomew and Amy his wife presented William de Kaynes, they were in possession of the patronage, and therefore they may well be admitted to avoid the last presentation made by the plaintiff's ancestor. And, if they did not present, then we hold that they cannot avoid the last presentation which is admitted, and they can traverse that presentation as well as avoid it on the ground of the non-age of their ancestor.—*Pulteney*. Then hold their answer on that point to be that they have traversed the presentation made by Amy and Bartholomew her first husband, and on that a proper answer; and we demand judgment, inasmuch as they have admitted the advowson to be appendant to the manor of Kilkhampston, of which manor they have not denied that we are seised, and they have not denied that the presentation made by Henry their ancestor, from which they take their title, was made while Amy was covert, and therefore we pray a writ to the Bishop.—HILLARY. Then, do you not deny their seisin of the acre, nor that which they have alleged on their behalf?—*Pulteney*. They have waived that, or else their plea is double.—SHARSHULLE. In Assise of Darrein Presentment it is necessary to plead as to the possession without having regard to the right; and you who are defendants have nothing to aid you to avoid the last presentation, which is the plaintiff's title, except

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covient saver a quei ils pledent.²—SCHAR. A ceo qe vous parles dappendance dune part et dautre, nous chargeoms geres³: qar celui qe presente nous luy tenoms patroun tanqe cel presentement soit voide; dounques, si Bartelmewe et Amye sa femme⁴ presenterent W. Keines, ils furent en possesioun⁵ de lavoere,⁶ par quei a voider le derrein presentement fait par launcestre le pleintif ils serrount bien resceu.⁷ Et sils ne presenterent pas, donques tenoms nous qils ne pount pas voider le derrein presentement gest conu, et auxibien pount ils traverser cel presentement come a voider⁸ cel par nounage lour auncestre.—*Pult.*⁹ Donques tenez lour respouns sur ceo qils ount traverse le presentement fait par Amye¹⁰ et Bartelmewe son primer baroun et sur cel covenant respons; et demandoms jugement, de si come ils ount¹¹ conu lavowesoun estre appendant al maner de K., de quel maner ils nont pas dedit nous estre seisi, ne le presentement fait par H. lour ancestre de quel ils pernount lour title nount ils pas dedit estre fait quant Amye¹⁰ fut coverte, par quei nous prioms bref al Evesqe.—*HILL.* Donques ne deditez vous pas lour seisine del acre, ne ceo qils ount allegge de lour part?—*Pult.* Ceo ount ils weive, ou autrement lour plee est double.—*SCHAR.* En Assise de derrein presentement il covient pleder en la¹² possession, sans aver regarde al dreit; et vous qestes defendauntz navez rien¹³ de vous eider pur voider le derrein presentement, gest le title le

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lavoeson
est appen-
dant,
come est
en un
Quare
impedit,
mes est
done par
possession
de
presente-
ment.¹

¹ This marginal note is from 25,184 alone.

² L., pledount.

³ L., poynt; Harl., gers.

⁴ The words *sa femme* are from L. alone.

⁵ L. and Harl., possessiones, instead of *en possesioun*.

⁶ L., *lavowesoun*.

⁷ 22,552, *rescieuz*.

⁸ 22,552, *aver voide*, instead of *a voider*.

⁹ *Pult.* is omitted from L.

¹⁰ L. *Agnes*.

¹¹ 22,552, *il ad*, instead of *ils ount*.

¹² L., *al* instead of *en la*.

¹³ *rien* is from 22,552 alone.

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your previous possession, which is traversed. Consider then whether you will maintain it. And it is otherwise when you allege possession for yourselves than if you had said nothing of that.—*R. Thorpe*. It is not: for when we are agreed that Bartholomew was seised of the manor and presented as appendant, and afterwards by the demise and taking back by Bartholomew and Amy his wife of the manor to which, &c., they were so seised, there is no doubt that, without affirming any presentation by themselves, they will avoid a presentation made by usurpation after their purchase, unless the purchase of the acre, &c., ousted her, which matter lies in fact, while the other lies in law.—*STONORE*. Choose whether you will maintain your own possession, as you did at the commencement, or waive that and plead in law.—*Thorpe*. Judgment whether to this double answer, &c.—Afterwards *Pulteney* said: You see plainly how they have admitted the appendance to the manor, and the demise, and the taking back of the manor, as above, and the assignment of dower made to Katharine, as above, and that we are seised of the manor, as above, and their deed by which they released, as above, and they do not lay stress on that which they say as to the seisin of the acre of meadow, and the advowson which they have admitted to be appendant to the manor cannot be severed so as to be appendant to parcel of it unless by specialty of which they show nothing; and we demand judgment whether there ought to be an assise.—And then *Moubray* made *profert* of a specialty touching the purchase of the acre and the advowson.—*Pulteney*. Sir, you see plainly how they have not denied, as above, and the fine purports to be dated in the tenth year of the reign of the King the father of the present King, and the specialty by which the avowson

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pleintif, forsqe vostre possession adevant, le quel est traverse.¹ Veiez donques si vous le voillez meyntener.

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Et il est autre quant vous alleggez possession pur vous qe si vous nussez rien parle de ceo.—*R.*²

Thorpe. Noun est pas : qar quant nous sumes a un qe Bartelmewe fut seisi del maner et presenta come appendaunt, et puis par demise et reprise a Bartelmewe et Amye³ sa femme del maner a qi, &c., ils furent issint⁴ seisiz, *non est dubium* qe saunz ascun presentement affermer en eux mesmes qils ne voydrount presentement fait par purprise apres lour purchase, sil ne fut qe la purchase de lacre, &c., luy oustaunt, quele chose⁵ chiet en fait, et lautre en ley.—*Ston*. Elises le quel vous voillez meyntener, vostre possession demene, come vous avez comence, ou weiver cela et pleder en ley.—*Thorpe*. Jugement si a cel respouns double, &c.—Puis *Pult*. Vous veiez bien coment ils ount conu lappendance al maner et la demise, et la reprise⁶ del maner, *ut supra*, et lassignement de dower fait a K. *ut supra*, et qe nous sumes seisi del maner, *ut supra*, et lour fait par quel ils ount relesse *ut supra*, et ceo qils parlent de la seisine del acre de pree ne chargent ils pas, et lavowesoun quele ils ount conu estre appendant al maner ne poet estre severe destre appendant a parcelle si ceo ne fut par especialte, de quei ils ne moustrent rien ; et demandoms jugement si Assise deive estre.—Et⁷ puis *Moubray* mist avant especialte del purchase del acre et de lavowesoun.—*Pult*. Sire,⁸

¹ 25,184, qil traverse, instead of le quel est traverse.

² B. is from L. alone.

³ L., Agnes.

⁴ issint is omitted from L.

⁵ chose is omitted from 22,552, and 25,184.

⁶ 22,552, purprise.

⁷ Et is from L. alone.

⁸ Sire is from Harl. alone.

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is said to be severed from the manor purports to be dated in the thirteenth year of the reign of the King the father, &c., so that this deed by which the advowson is said to be made disappendant to the manor is of later date than the fine by which Amy and her first husband took back an estate in the manor to which, &c., and the advowson is by plea admitted to have been appendant to the manor until the severance was effected by feoffment of the acre, which must have been made by the husband's demise when he and his wife held jointly, which could not put the wife out of possession; and it is not denied that the last presentation was made when Amy was covert, which could only be an usurpation, inasmuch as the advowson remained the whole time appendant to the manor, of which they have not denied that we are seised, as above; judgment whether an assise, &c.—*Moubray*. Then we hold ourselves to be discharged as to the presentation of William de Kaynes, since you do not maintain it; and we demand judgment inasmuch as you do not deny the feoffment of the acre of meadow and of the advowson, as above, and you have admitted the last presentation, which cannot be an usurpation inasmuch as we confirm it by title in ourselves, and we pray the assise in respect of damages.—*Seton, ad idem*. We understand that, when the husband and his wife were seised of the manor to which the advowson, &c., and the husband aliened one acre, parcel of the same manor, with the advowson, the advowson became appendant to the parcel, and was severed from the rest of the manor,

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serreit¹ severe del maner purporte date del an xiiij² le Roy piere, &c., issint qe ceo fait par quel lavowesoun serreit fait desappendante al maner [est de puisne date que la fyn par quele Amye³ et son primer baroun repristrent estat del maner a qi, &c., et lavowesoun par plee est conu appendant al maner]⁴ taunqe la severaunce fut fait par feoffement del acre, quel coviendreit estre fait par la demyse del baroun quant luy et sa femme tiendrent⁵ jointement, quele chose ne purra pas mettre femme⁶ hors de possession; et le derrein presentement nest pas dedit estre fait quant Amye³ fut coverte, qe ne poet estre forsque purprise, desicome lavowesoun demura tout temps appendant⁷ al maner, de qi ils nount pas dedit nous estre seisi, *ut supra*; jugement si assise, &c.—*Moubray*.⁸ Donques nous tenoms⁹ estre descharge del presentement W. Keynes, del heure qe vous le meynenez¹⁰ pas; et demandoms jugement desicome vous ne deditez pas¹¹ le feffement del acre de pree et lavowesoun, *ut supra*, et le derrein presentement avez conu, qe ne poet estre purprise desicome nous le affermoms¹² par title en nous,¹³ et prioms lassise en dreit¹⁴ de damages.¹⁵—*Setone, ad idem*. Nous entendoms qe quant le baroun et sa¹⁶ femme furent seisiz del maner a quei lavowesoun,¹⁷ &c., et le baroun aliena une acre, parcelle de mesme le maner,¹⁸ ove lavowesoun, qe lavowesoun devint appendant a la parcelle, et fut severe del remenant del maner,

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1842-3.¹ L., dust estre.² Harl., disme.³ L., Agnes.⁴ The words between brackets are not in 22,552.⁵ L., tyndrount.⁶ L. and Harl., homme.⁷ appendant is omitted from L.⁸ L., *Moubray*.⁹ 22,552, devons; 25,184, prioms.¹⁰ L., maynteignez.¹¹ Harl., mie.¹² 25,184, affermes.¹³ The words en nous are omitted from 22,552.¹⁴ The words en dreit are from L. alone.¹⁵ The report ends here in 22,552.¹⁶ L., la.¹⁷ avowesoun is omitted from L.¹⁸ L., del maner, instead of de mesme le maner.

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In respect
of fees of
services a
diversity
was
assigned
in that
they can-
not vest
without
the
consent
and will of
a third
person, to
wit, the
tenant; so
they are
not like
other fees.

until it should be deraigned by action of *Cui in vita*, as to which action we have our warranty, and her action at law shall be saved to the wife. And inasmuch as they have admitted that we are seised of the acre, as above, judgment.—SHARSHULLE. It is different in the case of fees and advowsons, which cannot be handled and cannot pass by livery, but only by words, from what it would be in the case of land: for the husband's grant of services which are of the right of his wife does not oust the wife from an avowry after his death, and, moreover, if she wished to bring a *Cui in vita* against the grantee, that would raise the question of warranty; so it is in the case of an advowson; for, suppose the advowson were in gross, there is no doubt that the wife will not by the husband's alienation be ousted from a *Quare impedit*, and you allow that after her recovery by *Cui in vita* the advowson will be appendant to the manor; consequently by right it remained the whole time appendant to the manor of which she is seised.—Moubray. After the recovery it will be appendant to the whole manor—as well to the acre which we hold, as to the rest; but in the mean time it is severed from the rest and remains appendant to the acre.—SHARSHULLE. Suppose you had aliened the acre to a stranger, and saved to yourselves the advowson, what action would she have? None, according to your intendment: for she is a purchaser, for whom a writ of Right does not lie, and she shall not have a *Cui in vita* in respect of an advowson; consequently she will suffer disherison.—Pole. We are not in such a case: for we are seised of the acre, in respect of which she can have her recovery with the appurtenances; and, if the matter were of the nature you mention, she would perhaps, by reason of the

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tange ceo fuit derene¹ par accion de *Cui in vita*, a quel accion nous avoms nostre garrauntie, et la ley serra salve a la femme. Et, desicome ils ount conu ge nous sumes seisi del acre, *ut supra*, jugement.—

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SCHAR. Il est autre de fees et avowesouns ge ne sount pas mainables, et ge ne pount passer² par livre, mes par parole, qil ne serreit de terre: qar graunt de³ baroun des services ge sount del dreit sa feme, ne ouste pas la femme⁴ davowerie apres sa mort, et uncore si ele voleit porter *Cui in vita* vers le grante, ceo cherreit en garrauntie; auxi est ceo davowesoun; qar mettez ge ceo fut gros, nest pas doute ge par lalienacion le baroun la femme ne serra pas ouste de *Quare impedit*, et vous grauntez qapres son⁵ recoverir par le⁷ *Cui in vita*, ge ceo serra appendant al maner; *per consequens* de dreit tout temps demura⁸ appendant al maner de qi ele est seisi.—*Moubray*. Apres le recoverir ceo serra appendant a tout le maner, auxibien al acre ge nous tenoms, come al remenant; mes en le mene temps cest severe del remenant, et demurt appendant al acre.—SCHAR. Jeo pose ge vous alienastez lacre a un estraunge, et salvastes⁹ a vous lavowesoun, quel accion avereit ele? Nule a vostre entente: qar ele est purchasseresse,¹⁰ pur qi bref de Droit ne gist pas, ne *Cui in vita* navera ele pas davowesoun; *per consequens* ele serra¹¹ desherite.—*Pole*. Nous ne sumes pas en tiel cas: qar nous sumes seisi del acre, vers qi ele poet aver soun recoverir ove les appurtenances; et, si la matere fut tiele come vous parles, pur le

En droit des fees de services fut diverse faite, qils ne pont nient vester sanz lassent et la volonte de la terce persone, cest assaver de tenant; issint ne mye semblable.⁶

¹ Harl., dearene.

² Harl., passent, instead of pount passer.

³ L., le, instead of graunt de.

⁴ L., nest pas la femme ouste, instead of ne ouste pas la femme.

⁵ This marginal note is from 25,184 alone.

⁶ L., le.

⁷ L., de, instead of par le.

⁸ L., demorra.

⁹ L., salvant, instead of et salvastes.

¹⁰ Harl., purchaceresse.

¹¹ Harl., serreit.

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* mischief, maintain a *Quare impedit*, because the law varies with the fact.—*Stouford*. No one can sever an advowson which is appendant, and cause it to be appendant to a certain parcel of the entirety to which it was appendant, except one who has right therein, for if another does so, if the advowson has to pass, it will be rather as in gross than as appendant; and I think that, in such a case, without very possession, a person being so enfeoffed by one who holds in another's right has nothing through his purchase.—*Moubray*. There is no doubt that if there had been a dispute between Henry, our father, and Amy and her husband, on the presentation, by means of a *Quare impedit*, our ancestor would have deraigned it against them by force of his purchase, and as appendant to the acre; therefore, since he then had right, no one can say that it is an usurpation, because usurpation upon a *feme covert* is properly where her husband and she could have prevented it, if they had wished; and therefore we are not in the case of the Statute.¹ And as to that which you say that no one can sever an advowson except one who has right therein, suppose that I am seised of a manor to which an advowson, &c., and lease it to W. Sharshulle for term of life, and he aliene in fee one acre together with the advowson, by reason of this alienation I shall enter upon the acre, and on the next vacancy I shall present as appendant to the acre; for of the rest of the manor I have nothing,

¹ 13 Edw. I. (Westm. 2), c. 5.

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meschief par cas ele meyntendreit¹ le *Quare impedit*, qar le fait chaunge la ley.—*Stouf*. Nul homme poet severer une avowesoun qest appendante, et la faire estre appendante a certain parcelle del gros a qi ceo fuit appendant, forsque celui qe dreit en ad, qar si autre le fait, si lavowesoun duist passer, ceo serra plus tost come gros qe come appendant; et jeo quide qen tiel cas, sans verrai possession, un tiel qest feffe par celui qe tient en autri dreit nad rien par my soun purchace.—*Moubray*. Nest pas doute qe si debat ust este entre Henre, nostre pere, et Amye² et son baroun, sur le presentement, par³ *Quare impedit*, qe nostre auncestre ne lust⁴ derene⁵ vers eux par force de son purchace, et come appendant al acre; donques, quant il avoit dreit adonques, nul homme⁶ poet dire qe ceo soit⁷ purprise, qar purprise sur femme coverte est proprement ou⁸ soun baroun et luy la poiaint⁹ aver arestu,¹⁰ sils ussent volu¹¹; par quei nous ne sumes pas en cas destatut. Et a ceo qe vous parlez qe nul homme put severer avowesoun¹² forsque celui qe dreit en ad, jeo pose qe jeo soy seisi dun maner a qi un avowesoun, &c.,¹³ et le lesse¹⁴ a W. Schar. a terme de vie, et il aliene en fee un acre ensemblement¹⁵ ove lavowesoun, par cele¹⁶ alienacion jeo entray en lacre, et a la proschein voidaunce jeo presenteray come appendant al acre¹⁷; qar del remenant del maner jeo nay rien,

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¹ L., homme mayntendra, instead of ele meyntendreit.

² L., Agnes; the words et Amye are omitted from Harl.

³ Harl., de.

⁴ L., nust; Harl., nel ust, instead of ne lust.

⁵ Harl., desrene.

⁶ L., ne.

⁷ L., fust.

⁸ L., la ou.

⁹ L., pont.

¹⁰ L., restu.

¹¹ L., volunte.

¹² avowesoun is omitted from Harl.

¹³ L., dune avowesoun appendante a un maner, instead of dun maner a qi un avowesoun, &c.

¹⁴ 25,184, lees.

¹⁵ ensemblement is from Harl. alone.

¹⁶ 25,184, yeele.

¹⁷ The words al acre are omitted from Harl.

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and so the advowson can be severed; so also in this behalf.—SHARSHULLE. You could assign this same reason even if the advowson were in gross, in which case it would be quite clear.—*Blaykeston*. Suppose that Amy had aliened the rest of the manor, there is no doubt that the feoffee would have nothing in the advowson, but if, after her alienation, she brought a *Cui in vita* against us, and recovered the acre with the appurtenances, there is no doubt that she would present; consequently the advowson is not now appendant to the rest of the manor which she holds.—HILLARY. A stranger enfeoffed by Amy will not plead usurpation as she could; and therefore he will have nothing in the advowson.—*Blaykeston*. A *feme covert* is not aided by usurpation, &c., except in respect of that which is of her own inheritance; and she is not in that case.—SHARSHULLE. She would not have such a plea as she now pleads by common law, before the Statute.¹—STONORE. How will you prove that this could be an usurpation when she had no right to present at the time? And it seems to us that this is not an usurpation; wherefore, Plaintiff, sue you a writ to the Bishop, and have the assise to enquire as to damages.—And *Nisi prius* was

¹ 13 Edw. I. (Westm. 2), c. 5.

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et issint poet il estre severe; auxi de ceste part.—
 SCHAR. Mesme cesty¹ resoun purrez vous faire
 mesqe lavowesoun fuit un gros, en quel cas il serreit²
 tout clere.—*Blaik.* Jeo pose qe Amye³ ust aliene le
 remenant, *non est dubium* qe le fesse navera rien en
 lavowesoun, mes si ele portast apres salienacion vers
 nous *Cui in vita*, et recoverast lacre ove les appur-
 tenances non est *dubium* qele ne⁴ presentera; *per*
consequens ceo nest pas ore appendant al remenant
 du maner⁵ quel ele tient.—*HILL.* Lestraunge fesse
 par Amye⁶ ne pladera pas la purprise come ele put;
 par quei il navera rien en lavowesoun.—*Blaik.*
 Femme coverte nest pas eide par⁷ purprise, &c.,
 mes de ceo qest de soun⁸ heritage demene⁹; et¹⁰
 ele nest pas en le cas.—*SCHAR.* Ele navera¹¹ tiel
 plee come ele plede ore par comune ley, avant
 estatut.—*STONORE.*¹² Coment voillez prover qe ceo¹³
 purreit estre purprise, quant ele¹⁴ navoit¹⁵ dreit a
 presenter adonques? Et il nous semble qe ceo nest
 pas purprise; pur quei, vous, pleintif, suez bref al
 Evesqe, et lassise pur damages.¹⁶—Et *Nisi prius* fut

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1342-3.¹ L., la; Harl., ceo.² L., serra.³ L., Agnes; Harl., auncestre.⁴ ne is omitted from Harl.⁵ The words du maner are omitted from Harl.⁶ L., Agnes.⁷ par is omitted from 25,184.⁸ Harl. and 25,184, lour.⁹ demene is from L. alone.¹⁰ L., mes.¹¹ Harl., avera.¹² 25,184 is the only MS. which gives this name in full.¹³ Harl., ceste.¹⁴ L. and Harl., il.¹⁵ L., avoit.¹⁶ The judgment and the reasons for it appear in the record thus:—

“Et quia, auditis hinc inde et

“plenius intellectis partium præ-
 “dictarum rationibus, liquet mani-
 “feste quod prædictus Theobaldus
 “in demonstratione sua pro titulo,
 “&c., ad assisam habendam dicit
 “quod prædictus Henricus, pater,
 “&c., feoffatus fuit de prædicta
 “acra prati et advocacione præ-
 “dicta, et ultimo præsentavit ad
 “eandem ecclesiam prædictum
 “Thomam de Stapeldone, &c., qui
 “ad præsentationem, &c., per cujus
 “mortem, &c., et prædicti Johannes
 “et Amia superius expresse cog-
 “noverunt eundem Thomam ad-
 “missum fuisse, &c., ad præsentationem
 “eiusdem Henrici, sed
 “nituntur præcludere prædictum
 “Theobaldum ab assisa prædicta
 “per hoc quod asserunt præsentationem

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granted, and he had a day three weeks after Easter. —And immediately there came a writ to cause the record to come into the Chancery by way of Error, and an *Alias, vel causam* writ, &c.—*Pole*. You cannot send the record, because the assise in respect of damages, which will be parcel of the record, is yet to be taken.—*Thorpe*. The assise is to be taken only on the quantity of the damages, but the judgment is, in effect, fully rendered, and if the judgment be affirmed, that matter can as well be enquired of elsewhere as here.—And STONORE signified, as a cause, into the Chancery, that as the record was not complete, and judgment was not fully rendered, he could not send the record thither.—And, notwithstanding the cause assigned, a writ was sent directing that, inasmuch as it did not constitute a cause, he should send the record.—And so it was done.—And when

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graunte, et habuit diem a die Paschae in tres Septimanas. A.D.
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—Et tauntost vint¹ bref de faire venir le recorde en Chauncellerie pur voie derroure, et *Sicut Alias, vel causam, &c.*—*Pole.* Vous ne poetz² maunder le recorde qar lassise pur damages,³ qe serra parcelle del recorde, est unqore a prendre.—*Thorpe.* Lassise est⁴ a prendre forsque sur la quantite des damages, mes le jugement en effect est trestout rendu, et si le jugement soit afferme, ceo poet auxi bien allours estre enquis come cy.—Et *Ston.* signifia cause⁵ en Chancellerie pur ceo qe le recorde ne fut pas plein, ne jugement de tout rendu, il ne put maunder illoeqes le recorde.—Et *non obstante causa*, bref⁶ fut mande *quod non obstante causa, eo quod non fit⁷ causa*, qil⁸ maundast le recorde.—*Et ita factum est.*⁹—Et

"tionem prædictam de prædicto
"Thoma ad ecclesiam prædictam,
"per præfatum Henricum factam,
"usurpatam fuisse super prædictos
"Bartholomæum et Amiam tem-
"pore quo eadem Amia co-operta
"fuit, &c., Videtur Curis hic quod
"præsentatio illa in vera posses-
"sione prædicti Henrici patris, &c.,
"cujus heres, &c., et non usurpatio
"in jure censeri debet in hoc casu.
"Et ideo rationibus istis et aliis
"consideratum est quod idem
"Theobaldus recuperet præsentationem
"suam ad ecclesiam prædictam,
"et habeat breve Episcopo Exoniensi
"quod [&c.]
"et etiam quod idem Theobaldus
"habeat assisam ad inquirendum
"de damnis, &c., de valore ecclesie," &c.

¹ L., ount.

² L., poies.

³ The words pur damages are omitted from L.

⁴ L., nest pas; Harl., est unqore.

⁵ L., pur cause.

⁶ 25, 184, *brevis*.

⁷ So L.; the other MSS., *est*.

⁸ L., qils.

⁹ It appears by the roll that the first writ of Error to send the record and process into the Chancery was dated the 9th of February, and the *Alias* writ the 22nd of February. It was recited in the latter that the Chief Justice had (as stated by himself) not acted upon the first writ, because judgment was not fully rendered, the assise not having been taken as to the value of the church. The record and process were sent as directed by the *Alias* writ. The assise having been taken in the mean time, a writ dated the following 18th of June was sent (on the prayer of the plaintiff) to the Chief Justice directing him to have the verdict enrolled, and then again to send the record and process into the Chancery. The enrolment of the verdict before the Justices of Assise having been made, judgment was given in the Court of Common Pleas for the plaintiff to recover his damages, and then the complete record was sent into the Chancery in accordance with the writ.

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A.D. 1342-3. the record was in the Chancery the plaintiff prayed a *Ne admittas* to be directed to the Bishop.—But he could not have it, &c.

Assise of
Darrein
Present-
ment.

§ Theobald de Greneville brought an Assise of Darrein Presentment against John de Ralegh, of Charles, and Amy his wife, and prayed that it might be made known by the assise who presented the last parson to the church of Kilkhampton which is void, &c. And he said that one Henry his father, whose heir he is, was seised of one acre of land to which the advowson is appendant, in the time, &c., and presented his clerk, one Thomas de Stapeldone, who on his presentation, &c., by whose death the church is now void, &c. And he made the descent of the acre of land to which, &c., from Henry to Theobald as to son and heir. So, he said, it belonged to him to present, and he prayed the assise.—*R. Thorpe*. We make protestation that we do not admit that the advowson is appendant to the said acre of land; but we say that the manor of Kilkhampton, to which the advowson is appendant, was in the seisin of one Richard de Greneville in the time of King Edward, grandfather of the present King. And from Richard (because he died without heir of his body) the manor to which, &c., descended to Bartholomew as to brother and heir, which Bartholomew assigned a third part of the same manor to Katharine who was the wife of the said Richard, to hold in the name of dower together with the presentation on the third turn; and afterwards the church became void, wherefore Bartholomew presented his clerk one Richard de Greneville, who, on his presentation, &c. And afterwards this Bartholomew gave the two other parts of the same manor, and granted the reversion of the third part

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quant le recorde fut en Chancellerie, le pleintif pria A.D.
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*Ne admittat*¹ *Episcopo.—Sed non potuit habere, &c.*

§ ² Thebaud de Greneville porta une Assise de Assise de
Darrein
Present-
ement.
Darrein Presentement vers Johan de Raly, de Charles, et Amye sa femme, et pria qe reconu fuit par Assise qe presenta la persone darreine al Eglise de K., qe voide est, &c. Et dit qun Henre³ son piere, qi heir il est, fuit seisi de une acre⁴ de terre a quei la-voweson est appendant, en temps, &c., et presenta un son clerk Thomas Stapilton, qe a son presentement, &c., par qi mort leglise est ore voide, &c. Et fist la descente de H., de la dite acre de terre, a quei &c., a T. come a fitz et heire. Issint il dit qe appent a luy a presenter, et pria lassise.—*R. Thorpe.* Nous fesoms protestacion qe ne conisoms pas qe la-voweson est appendante a la dite acre de terre; mes nous dioms qe le maner de Kilkhamtone, a quei la-voweson est appendante, fuit en la seisine un Richard de Greneville⁵ en temps le Roi E.,⁶ aiel le Roi qore est. Et de Richard (pur ceo qil morust sanz heire de son corps) descendi le maner a quei, &c., a Bartelmewe come a frere et heire, le quel Bartelmewe assigna le iij part de mesme le maner a K. qe fuit la femme le dit R. a tener en noun de dower ensemblement ove le presentement par le iij tourn; et puis leglise se voida, par quei Bartelmewe presenta un son clerk Richard de Greneville, qe, a son presentement, &c. Et puis cesty Bartelmewe dona les ij parties de mesme le maner, et granta le reversion del iij partie

¹ L. and Harl., *amittat*.

² This report of the case appears as No. 57 in the old editions. The note on the second report of No. 5 (p. 17, note 4), is applicable also to this.

³ Rastell (here and elsewhere), Herry.

⁴ une acre is here, and throughout, substituted for the ij acres of

the old editions, as being in accordance with the record.

⁵ The name is given in accordance with the record, and not as printed in the old editions.

⁶ In the time of Edward I. according to the record, and in the time of Henry III. in the old editions.

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which the woman held in dower to Margaret late wife of John Dynham, by reason of which grant the woman attorned. Afterwards a fine was levied, in the tenth year of the reign of the King who is dead, between the aforesaid Margaret, plaintiff, and the said Bartholomew and Amy his wife, who is now the wife of John de Raleigh, against whom this assise is brought, deforciant, in which the said Bartholomew acknowledged the manor of Kilkhampton to be the right of Margaret as that of which she had two parts by his gift, for which acknowledgment Margaret granted and rendered the two parts of the same manor, and granted the reversion of the third part, after the death of the tenant in dower, to the aforesaid Bartholomew and Amy his wife, who is now the wife of John de Raleigh, to hold for term of their two lives, and, after their decease, the remainder was limited to others. And he said that the woman tenant in dower attorned. And he said that afterwards the church became void, wherefore Bartholomew and Amy presented their clerk, one William de Kaynes, who, on their presentation, &c. And he said that Henry, the plaintiff's father, released by a deed, of which they made *profert*, all the right which he had in the manor of Kilkhampton, reserving to himself £20 of rent seck. And he said that the presentation from which Theobald took his title was an usurpation effected on the wife while she was covert of this Bartholomew, in the turn of Katharine who was tenant in dower. And he demanded judgment whether the plaintiff ought to have the assise.—*Moubray* said that several pleas of different natures were comprised in this answer and therefore prayed that he might hold to one.—But he was ousted from the exception because the whole plea shall be understood

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qe la femme tenist en dowere a Margarete qe fuit la femme Johan Dynham,¹ par quel grant la femme sattourna.² Puis fine se leva, lan disme le Roy qe mort est, entre lavantddite Margarete pleintif,³ et le dit Bartelmewe et Amye sa femme, qore est la femme Johan de Raly, vers qi cest assise est porte, deforcians,⁴ ou le dit Bartelmewe conust le maner de Kilkamtone estre le dreit Margarete come ceo de quel ele avoit les ij parties⁵ de son doun, pur quel conisance Margarete granta et rendi les ij parties de mesme le maner, et granta le reversion del iij partie, apres la mort le tenant en dower, a les avantdits Bartelmewe et Amye sa femme, qore est la femme le dit Johan de Raly, a tener a terme de lour ij vies, et, apres lour deces, le remeindre fuit taille as autres.⁶ Et dit qe la femme tenante en dower sattourna. Et dit qe puis leglise de voida, par quei Bartelmewe et Amye presenterent un lour clerk, William⁷ de Kaynes, qe a lour presentement, &c. Et dit qe Henre, pere le pleintif, relessa par un fait, quel ils moustrerent avant, tout le dreit qe il avoit en le maner de Kilkamtone, reservant a luy xxl. de sek rent. Et dit qe le presentement de quel Thebaud prist son title fuit un purprise fait sur la femme tanqe ele fuit covert de cesti B., en le tourne Katerine qui fuit tenante en dower. Et demanda jugement sil deit lassise aver.—*Moubr.* dit qe plusours plees fuerent compris en ceo respons de divers natures, par quei il pria qil tenust a lun.—Mes il fuit ouste pur ceo qe tout le plee serra

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¹ Rastell, Denham. In the record the name is given only as *Margaretæ* de Dynham.

² Katharine attorned to Margaret de Dynham according to the record.

³ deforciant, according to the record.

⁴ pleintifs, according to the record.

⁵ According to the record the fine was simply a fine of the manor.

⁶ to Henry son of Bartholomew, in tail, according to the record.

⁷ The name has been corrected in accordance with the record.

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to be for the purpose of showing the right of the defendants to have a writ to the Bishop, except only the plea which they have taken as to the usurpation, which ought to be understood to be their answer; wherefore, &c.—*Moubray* said over: Sir, we make protestation that we do not admit the demise made to Margaret nor the fine, nor, any more, that Bartholomew and Amy presented William de Kaynes as they have said; but we say that we fully admit that the advowson was at one time appendant to the manor of Kilkhampton, and that Richard de Greneville, of whom they have spoken, was seised of the same advowson, as appendant to the said manor, and that it descended to Bartholomew as to brother and heir, and as appendant, and that Bartholomew presented as they have said; but we tell you that this Bartholomew granted one acre of land together with the advowson to Henry our father, from whom we have taken our title, &c., by virtue of which grant the advowson became appendant to the acre of land. And we demand judgment whether contrary to the deed of Bartholomew, through whom you claim your estate, you can say that the advowson is still appendant to the manor. (And he made *profert* of a deed bearing date the thirteenth year of the King who is dead, which proved Bartholomew's grant.) And further, as to the presentation of William de Kaynes, of which you have spoken, we will aver that he was not admitted nor instituted by the Bishop on the presentation of Bartholomew and Amy, as they have said; ready.—*R. Thorpe*. That is double: one plea is that you traverse our presentation, which is a good answer by itself; another is in that you make *profert* of Bartholomew's deed, which proves the advowson to be appendant to the acre of land, which is a different answer; wherefore we pray to be discharged as to one of them.—*Moubray*. We must have the whole, if there is to be a reply to your answer, because if we are to have only the traverse of the presentation, &c., the usurpation which you have

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entendu pur le dreit les defendants moustrer pur
 bref aver al Evesqe, forsque soulement le plee qils ont
 pris sur la purprise, le quel deit estre entendu lour
 respons; par quei, &c.—*Moubray* dit outre Sire,
 nous fesoms protestacion qe nous ne conissons pas
 la demise fait a Margarete, ne la fine, ne plus qe
 Bartelmewe et Amye presenterent William¹ de Kaynes,
 come ils ont dit; mes nous dioms qe nous conissons
 bien qe lavoweson en ascun temps fuit appendant
 al maner de Kilkamtone, et qe Richard de Greneville,¹
 de qi ils ont parle, fuit seisi de mesme lavoweson
 come appendante al dit maner, et qe ele est de-
 scendue a Bartelmewe come a frere et heir, et come
 appendante, et qe Bartelmewe presenta come ils ont
 parle; mes nous vous dioms qe cesti B. granta une
 acre de terre ensemble ove lavoweson a Henre
 nostre pere, de qi nous avoms pris nostre title, &c.,
 par vertu de quel grant lavoweson devient appendante
 a lacre de terre. Et demandoms jugement si
 encontre le fait Bartelmewe, par qi vous clames
 vostre estat, poiez vous dire qe lavoweson est uncore
 appendante al maner. (Et mist avant fait, qe prova
 le grant Bartelmewe, qe porte date lan xiiij le Roy
 qe mort est.) Et outre quant al presentement de
 William de Kaynes¹ de qi aves parle, nous voloms
 averer qe il ne fuit resceu ne institut del Evesqe
 al presentement B. et Amy, come ils ont dit; prest.
 —*R. Thorpe*. Ceo est double: un qe vous traverses
 nostre presentement, quel est bon respons a per luy;
 un autre de ceo qe vous mettez avant le fait
 Bartelmewe, qe prove lavoweson estre appendante a
 lacre de terre, quel est autre respons; par quei
 de lun nous prioms estre descharge.—*Moubray*. Il
 covient qe nous eioms tout, si vostre respons serra
 respondu, car si nous eioms le travers al presente-
 ment, &c., la purprise quele vous aves surmise

¹ The name has been corrected in accordance with the record.

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surmised is not answered at all, for usurpation can only be effected on a person in possession before the usurpation; now you have not shown any possession in yourselves other than the presentation of William de Kaynes, who was presented by Bartholomew and Amy, and that presentation we have traversed, and so far we have answered to the usurpation; and, in so much as we have made *profert* of Bartholomew's deed we have answered your supposition that the advowson is appendant to the manor of Kilkhampton; and therefore we ought to have both answers.—But nevertheless *Moubray*, *gratis*, relied on Bartholomew's deed, and prayed judgment, since it was proved by that deed that the plaintiff's father had the right to present, whether they could say that his presentation was an usurpation effected on the woman.—*R. Thorpe*. And we pray judgment since you have admitted the advowson to be appendant to the manor of Kilkhampton in Bartholomew's hands, and have not denied the demise of the same manor which Bartholomew made to Margaret, nor the taking back of an estate to him and Amy his wife, who is now the wife of John against whom, &c. And a fine was levied in the tenth year of the King who is dead, which fact you have not denied; and Bartholomew's deed, by which an estate accrued to you, bears date the thirteenth year of the King who is dead, and so it was executed after the time of the taking back of an estate by Bartholomew and Amy, at which time he could not make a grant; and therefore the presentation which your father had by reason of that grant cannot be called anything but an usurpation made upon the woman while she was covert; wherefore judgment whether an assise, &c.—*Seton*. And we pray judgment, since they have not denied Bartholomew's deed, by which the advowson passed to our father; and although that was after she had an estate in the advowson, that is a stronger reason why she should be put to her action of *Cui in vita*,

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est a nient respondue, car purprise ne puit estre fait sinon a cesti qe fuit en possession devant le purprise; ore vous naves moustre autre possession en vous forsqe la presentement de William de Kaynes,¹ qe fuit presente par B. et Amye, et cel presentement avoms traverse, et en tant nous avoms respondu a la purprise; et, en tant qe nous avoms mis avant le fait Bartelmewe, nous avoms respondu a ceo qe vous supposes lavoweson estre appendante al maner de K.; par quei il covient qe nous eioms les ij.—Mes nepurquant, de gre, il relia sur le fait Bartelmewe, et demanda jugement, del heure qe par cel fait fuit prove qe son pere avoit droit de presenter, poient ils dire qe son presentement fuit une purprise faite sur la femme.—*R. Thorpe.* Et nous jugement, del heure qe vous aves conu lavoweson estre appendante al maner de Kilkamtone en la main Bartelmewe, et vous navez par dedit le demise qe Bartelmewe fist a M. de mesme le maner, ne la reprise fait a luy et Amye sa femme, qest ore la femme Johan vers qi, &c. Et fine se leva lan x le Roi qe mort est, quele chose vous navez pas dedit; et le fait Bartelmewe, par quel estat accruist a vous, porte date lan xiiij le Roy qe mort est, issint fuit ceo fait puis le temps de la reprise a Bartelmewe et Amy, a quel temps il ne puit grant faire; et par tant le presentement quel vostre piere avoit par cel grant ne puit estre autre dit qe une purprise fait sur la femme tant come ele fuit coverte; par quei jugement si assise, &c.—*Setone.* Et nous jugement del heure qe ils nont pas dedit le fait Bartelmewe, par quel lavoweson passa a nostre piere; et mesqe ceo fuit puis qele avoit estat en lavoweson, cest greindre resoun qe ele soit mise a saccion de *Cui in vita*,

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¹ The name has been corrected in accordance with the record.

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by which our warranty could be saved against Bartholomew's heir, than for ousting us from the advowson by this suit, by which our warranty may be lost; wherefore, inasmuch as they have admitted our last presentation by title, we demand judgment, and pray the assise in respect of damages.—*R. Thorpe*. Where the husband alienes the wife's right in respect of something which can be handled, there the wife, after the husband's death, shall be put to her action of *Cui in vita*, but in respect of things which cannot be handled and which are aliened by the husband she shall not be put to her action, but after her husband's death shall take up possession; as, for instance, suppose that the husband alienes a knight's fee with services which are of the wife's right, the wife has no need to bring her *Cui in vita* after his death, but only to distrain on the tenant for the services; so it seems here.—*Stonore*. The cases are not similar: for in a case in which the husband grants the services of a tenant, which are the woman's right, to another, nothing will pass by the husband's grant without the attornment of the tenant who is a stranger, and in respect of his demise the wife cannot have a *Cui in vita*; but an advowson passes by the husband's grant alone; wherefore, &c.—*Grenc*. It is not right that the wife should be put to her action by *Cui in vita*: for in case she were put to her action, she would have to bring a writ in respect of the acre of land alone; then, even if she were to recover the subject of her demand, she still would not recover the advowson, because the advowson cannot be appendant to the acre in her hand. Therefore, by being put to her action where she cannot have an action by *Cui in vita* in respect of this advowson, she would be put to mischief.—*Moubray*. If we can prove that our presentation cannot be called an usurpation on the woman, it seems that we have attained our purpose. And, Sir, you will see that it cannot be called an usurpation,

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par quel nostre garrantie poet estre save vers le heir Bartelmewe, qe de ouster nous de lavoweson par ceste suite, par quel nostre garrantie poet estre perdue; par quei, en tant qils ont conus nostre darrein presentement par title, nous demandoms jugement, et prioms lassise en droit des damages.—*R. Thorpe*. La ou le baron aliene le droit la femme de chose qe est manurable, la la femme, apres la mort le baron, serra mise a saccion de *Cui in vita*, mes de choses nient manurables qe sont alienes par le baron la femme, la ne serra mise a saccion, einz apres la mort son baron harrera la possession; come en cas jeo pose qe le baron aliene un fee de chivaler ove services qe sont de droit la femme, la femme nad mester apres son mort de porter son *Cui in vita*, mes destreindre le tenant pur les services; issint semble icy.—*Ston*. Ils ne sont pas semblables; car en cas qe le baron grante les services dun tenant, qe est de droit sa femme, a un autre, riens passera par le grant le baron sans attournement le tenant qe est estrange persone, de qi demise la femme ne poet pas aver *Cui in vita*; mes avoweson passe seulement par le grant le baron; par quei, &c. —*Grene*. Il nest pas resoun qe la femme soit mise a saccion par *Cui in vita*: car en cas qe ele fuit a saccion il la coviendrait porter un bref de lacre de terre seulement; donques, mesqe ele recovere sa demande, uncore ele ne recovera pas lavoweson, car lavoweson ne poet estre appendante a lacre en sa main. Donques de luy mettre a saccion, la ou de cele avoweson ele ne poet pas aver accion par le *Cui in vita*, ele serreit a meschief.—*Moubray*. Si nous poioms prover qe nostre presentement ne poet pas estre dit une purprise a la femme, il semble qe nous sumes a nostre purpos. Et, Sire, vous verres qe ceo ne poet estre dit une purprise, car lestatut

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because the Statute¹ gives the woman a plea to allege usurpation effected to such mischief that by presentation made while she was covert she was put out of possession, whereas her husband could, if he wished, have prevented that presentation, which was contrary to right; but now we are not in this case, because even though the husband had wished to raise a dispute on our father's presentation, it would have been of no avail against his own deed; wherefore it seems to me that they are not in the case of the Statute¹ to prove this presentation to be an usurpation. And as to that which *Grene* has said that, even though she were to recover the acre of land by *Cui in vita*, she would not recover the advowson because it cannot be appendant to the acre in her hand, that is not so: for I say that by the recovery of the acre of land she will recover the advowson, because even though she cannot recover the advowson as appendant to the acre of land, the advowson will by the recovery be rejoined to the manor; wherefore, &c.—*Stouford*. That which you take as a reason for the application of the Statute¹ cannot be a reason, for I hold it to be beyond doubt that, if the husband had aliened the advowson as in gross, the wife would take the presentation after her husband's death without being put to her action, and further, even though the person to whom the husband had aliened had presented during the husband's life, he could not have raised any dispute.—*Pole*. Sir, in case she brings a *Cui in vita* in respect of the acre of land and of the advowson, Bartholomew's heir will have to warrant in respect of the whole; wherefore there is a stronger reason to put her to her action and to save our warranty than to give this presentation over to her, as by judgment to the latter effect we shall lose our warranty.—*SHARDELOWE*. Should she bring *Cui in vita* and demand the acre of land and the advowson, you

¹ 13 Edw. I. (Westm. 2), c. 5.

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doune plee a la femme dallegger la purprise fait sur tiel meschief qe par le presentement faite tant come ele fuit coverte ele fuit mise hors de possession, la ou son baron puit aver arestu cel presentement, sil voleit, qe fuit contre resoun; mes ore nous ne sumes en cel cas, car mesqe le baron voleit aver mis debat sur le presentement nostre pere, il nust pas valu encontre son fait demene; par quei moy semble qe ils ne sont pas en cas destatut de prover cel presentement une purprise. Et quant a ceo qe *Grene* ad dit qe, mesqe ele recovere par le *Cui in vita* lacre de terre, ele ne recoversa pas lavoweson pur ceo qe ele ne poet pas estre appendante en sa main a lacre, ceo nest pas issint: car jeo die qe par le recoverir de lacre de terre ele recoversa lavoweson, car mesqe ele ne poet recoverir lavoweson come appendante a lacre de terre, jeo die qe par le recoverir de lacre de terre lavoweson serra rejoint al maner; par quei, &c.—*Stouf*. Ceo qe vous pernes par cause destatut ne poet pas estre cause, car jeo teigne pur nul doute qe si le baron ust aliene lavoweson com un gros qe la femme prendreit le presentement, apres la mort son baron, sans estre mise a saccion, et uncore mesqe cesty a qi le baron ust aliene ust presente en la vie le baron, il ne puit mye aver fait nul debat.—*Pole*. Sire, en cas qe ele porte *Cui in vita* de lacre de terre, et de lavoweson, devera¹ leire Bartelmewe [garrantir]¹ de tout ceo; par quei greindre resoun est de luy mettre a sa accion, et a saver nostre garrantie qe luy doner outre cel presentement, et nous perdroms par cel agarde nostre garrantie.—*SCHARDE*. En cas qe ele portera le *Cui in vita* et demandera lacre de terre et lavoweson, del terre vous averes le voucher, et

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¹ The passage is obviously corrupt in the old editions. The substitution of *devera* for *devers*, and

the insertion of the word *garrantir* give, at any rate, some meaning, and are consistent with the context.

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will have a voucher as to the land, and not as to the advowson; wherefore, &c.—*Moubray*. Sir, it still seems to us that she is put to her action by *Cui in vita* in respect of the acre of land, by the recovery of which the advowson can be joined to the manor, and our warranty can be saved. And, besides, you see that our father's presentation cannot be called an usurpation on the woman, because the Statute which speaks of usurpers says that if one presents who has no right to present, while the woman is covert, *vel consimilibus*, those presentations shall be said to be usurpations; but in this case they have admitted a right in our father to present at the time at which he presented by virtue of the deed of her husband, and therefore that cannot be said to be an usurpation; wherefore judgment, &c.—*SHARDELOWE*. It seems to me that it shall be called an usurpation against the woman: for suppose that my tenant of an advowson for term of life gives you the advowson in fee, and you present during his life, and afterwards he dies, I shall have the presentation on the first voidance, by reason of my reversion, and the presentation that you have during the life of my tenant shall be called an usurpation against me, because, although you have a right to that presentation, you have no right in the advowson against me; so here. And as to that which you say as to her being put to her action of *Cui in vita*, you see that this writ must be maintained for her, or else she will be put without action, because the tenant will perchance make an alienation of the acre to another, against whom, even though she may recover the land, she will be no nearer a presentation to the church; therefore, if she be put to her action in respect of the advowson, she cannot have any other writ than a writ of Right, and she cannot take that because she has only a term for life in this advowson; therefore, either the present writ must be maintained, or you will put it that by the tenant's deed she will

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de lavoweson nemy; par quei, &c.—*Moubray*. Sire, tous dis, nous semble qe ele est mise a saccion par le *Cui in vita* de lacre de terre, par quel recoverir lavoweson puit estre joint al maner, et nostre garrantie poet estre salve. Et, ovesqe ceo, veiez qe le presentement nostre pierre ne poet estre dit une purprise sur la femme, car lestatut qe parle des purprisours dit qe si un qe nad pas dreit de presenter, tant come la femme est coverte, *vel consimilibus*, qe ceux presentements serront dit purprises; mes icy ils ont conu un dreit a nostre pierre de presenter al temps qil presenta par le fait son baron, pur quei ceo ne purra pas estre dit une purprise; par quei jugement, &c.—*SCHARDE*. Moy semble qe ceo serra dit une purprise vers la femme: car jeo pose qe mon tenant a terme de vie dun avoweson doune a vous lavoweson en fee, et vous presentes en sa vie, et puis il devie, jeo avera le presentement al primer avoidance par cause de ma reversion, et cel presentement quel vous avez en la vie mon tenant serra dit une purprise vers moy, car mesqe vous aves dreit a cel presentement vous navez pas dreit en lavoweson devers moy; issint icy. Et quant a ceo qe vous parles qe ele serra mise a saccion de *Cui in vita*, veiez qil covient qe cest bref soit maintenu pur luy, ou ele serra mise sans accion, car le tenant par cas fera alienacion de lacre a un autre, vers qi, mesqe ele recovere la terre, ele ne serra plus pres a presenter a lavoweson; donques si ele soit mise a saccion de lavoweson, ele ne poet autre bref aver forsqe bref de Dreit, et cel bref ne poet pas ele prendre, qar ele nad qe a terme de vie en ceste avoweson; donques ou il covient qe cest bref soit maintenu, ou vous metteres qe par le fait le tenant ele

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be ousted from action for ever, and this the law will not permit.—*Pole*. In the case that you have put the law will vary with the facts; but since she can now be at her action by *Cui in vita*, it seems that this writ cannot be maintained for her. And, Sir, it seems that if we can prove that the advowson is severed from the manor by the husband's alienation, she shall never have a presentation until the advowson is rejoined to the manor by the recovery of the land; that it is now severed from the manor see the proof: for suppose that, after the husband had aliened the land and the advowson to our father, he had given the rest of the manor to another, and then died, and the wife brought a *Cui in vita* in respect of the acre of land, and recovered the land and the advowson, she would present as appendant to the acre alone until she has recovered the rest of the manor, and so far it seems that by that alienation the advowson was severed from the manor; wherefore, &c.—*Blaykeston, ad idem*. Suppose that her husband had aliened the advowson as in gross to our father, and had afterwards aliened the manor to another, and had then died, there is no doubt that she would not have the presentation until she had recovered the manor; so it seems that she shall not have this presentation until she has recovered the acre of land.—*STONORE*. He has admitted that you have an estate in the same advowson by Bartholomew's feoffment; wherefore it seems that the presentation which your father had after the same estate was made to him cannot be called an usurpation, and consequently that presentation is a sufficient title upon which this action can be maintained; wherefore the Court adjudges that Theobald de Greneville do have a writ to the Bishop, and the assise in respect of the damages, because you have admitted that his father, whose heir he is, had the last presentation, and we adjudge that John de Raleigh and Amy his wife be in

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serra ouste daccion a tous jours, quele chose la ley ne suffra par.—*Pole*. En le cas qe vous avez mis le fait changera la ley; mes del houre qele poet ore estre a sa accion par le *Cui in vita*, il semble qe cest bref pur luy ne poet estre maintenu. Et, Sire, il semble si nous poioms prover lavoweson severe del maner par lalienacion le baron qe ele navera pas le presentement tanqe lavoweson soit rejoint al maner par le recoverir de la terre; ore qil est severe del maner veiez le prove¹: car jeo pose qe apres ceo qe le baron avoit aliene la terre et lavoweson a nostre piere qe il ust done le remenant del maner a un autre, et puis ust devie, et la femme porta le *Cui in vita* de lacre de terre, et recoveri la terre et lavoweson, ele presentera com appendante a lacre soulement tanqe ele eit recoveri le remenant del maner, et par tant semble qe par cele alienacion lavoweson fuit severe del maner; par quei, &c.—*Blayke*., *ad idem*. Jeo pose qe son baron ust aliene lavoweson come une grosse a nostre pere, et apres aliene le maner a un autre, et puis ust devie, il nest pas doute qe ele navera le presentement tanqe ele ad recoveri le maner; issint semble qe ele navera cest presentement tanqe ele eit recoveri lacre de terre.—*Ston*. Il ad conu a vous estat en mesme lavoweson par le feffement Bartelmewe; par quei il semble qe le presentement quel vostre piere avoit apres mesme lestat a luy fait ne purra estre dit une purprise, et *per consequens* cel presentement est tittle sufficient sur quel ceste accion purra estre maintenu; par quei agarde la Court qe Thebaud de Greneville eit bref al Evesqe, et lassise en dreit des damages, pur ceo qe vous avez conu le darrein presentement a son piere qi heire il est, &c., et qe Johan Raly et Amye sa femme soient

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¹ Rastell, *profe*.

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mercy. And on the morrow a writ was brought on behalf of John de Ralegh and Amy, his wife, to cause the record and process to come into the King's Bench on the ground of error assigned.—*Pole*. If the record be now sent into the King's Bench we shall be ousted from having execution in respect of our damages; wherefore, before we have sued execution of our damages, you cannot send the record.—*W. Thorpe*. In case this judgment should be reversed, it is not right that you should have execution for damages; and in case it should be affirmed, you will then have execution for damages out of the same Court in which it is affirmed; wherefore you ought to send the record.—And they did so.

View
demanded
and not
granted.
Yet they
were not
within the
express
words of
the
Statute.¹

(13.) § A. brought a writ against B., who demanded view.—*Derworthy*. You ought not to have view, because heretofore you had view on a like writ which we brought against you in respect of the same manor, which writ abated by exception after view.—And he was put to say by what exception, and said that it was on the ground that the words *cum pertinentiis* were wanting.—*Thorpe*. He now demands the manor with the appurtenances, so the demand is different from that which was in the first writ; wherefore we pray

¹ 13 Edw. I. (Westm. 2), c. 48.

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en la mercy.¹—Et lendemain fuit porte bref pur Johan Raly et Amye sa femme de faire venger le recorde et le proces en Bank le Roy² pur errour assigne, &c.—*Pole*. Si le recorde soit ore mande en Bank le Roy, nous serroms ouste daver execucion de nostre damage; par quei, avant qe nous eioms sue execucion de nostre damage, vous ne poies le recorde mander.—*W. Thorpe*. En cas qe cest jugement soit reverse, il nest pas resoun qe vous eies execucion des damages; et en cas qe ceo soit afferme, donques vous averez execucion des damages hors de mesme la place en quel il est afferme; par quei vous devez³ mander le recorde.⁴—Et issint fesoient.

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(13.)⁵ § A. porta bref vers B. qe demanda la viewe.—*Derworthi*. La vew ne devez aver, qar⁷ autrefoith avietz⁸ la viewe en autiel bref qe nous portames vers vous de mesme le maner, quel bref abatist par excepcion apres la viewe.—Et fut mis a dire par quele excepcion, qe dit⁹ qe pur ceo qe *cum pertinentiis* ifaillist.¹⁰—*Thorpe*. Ore demande il le maner ove les appurtenances, issint autre demande qe ne fut en le primer bref¹¹; par quei nous prioms

Viewe
demande
et ne mye
grante.
Uncore ne
furent ils
mye en
expresse
parole de
lestatut.⁶

¹ For the actual judgment and the reasons assigned for it, as appearing in the record, see above, p. 61 (Note 16).

² According to the other report and the roll, the record and process were to be sent into the Chancery, but in ordinary course the writ and proceedings would have been sent thence by *Mittimus* for the Error to be tried in the King's Bench.

³ Old editions, nous devons.

⁴ As to what was done when the writ of Error was sent into the Common Bench see the other re-

port, and the note thereto, p. 62, and p. 63 (Note 9).

⁵ From L., Harl., 22,552, and 25,184.

⁶ The marginal note subsequent to the word demande is from 25,184 alone. In Harl. it is *Nota*.

⁷ The words La vew ne devez aver qar are from L. alone.

⁸ L., il avoit instead of avietz.

⁹ The words qe dit are omitted from Harl.

¹⁰ Harl., and 22,552, yfaillist.

¹¹ All the MSS. except L., la primere, instead of en le primer bref.

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view. And suppose I were to demand one acre of land, saving one foot, and the tenant were to have view, and afterwards I were to demand, by another writ, the whole acre without any exception, it is certain that the tenant will have view; so also, in this behalf, when his demand is now made "with the appurtenances," there is more in this writ than in the other, and he shall have view, for in respect of anything appurtenant, as, for instance, an advowson, I can abate a writ on the ground of non-tenure, and I cannot do this in the case of the first writ.—SHARSHULLE. View is not necessary, &c.—And the tenant answered over.

Customs
and
Services
between
persons of
Religion
on both
sides.
And yet
enquiry
was made
as to
collusion.

(14.) § The Prior of the Trinity of London brought a writ of Customs and Services against the Abbot of Colchester, and counted that the Abbot held of him by certain services, and by relief after each voidance, whether by death or otherwise, &c., and laid the seisin as by his own hand.—And the Abbot could not deny this.—It was therefore adjudged that the Prior should recover the customs and services, and his damages, and that execution should be stayed until enquiry had been made as to collusion.—And in the same term the Abbot of York recovered an annuity against the Prior of Haltemprice, and the Court did not enquire as to collusion.

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le viewe. Et jeo pose qe jeo demande¹ une acre de terre,² salve³ un pee,⁴ et le tenant eit la viewe, et puis jeo demande, par un autre bref, lacre entiere sanz forprise, *constat* qe le tenant avera la viewe; auxi de ceste part, quant il demande ore⁵ ove⁶ les appurtenances, plus en ceo bref qen lautre, et⁷ avera la viewe, qar de chose appurtenante jeo abaterai⁸ le bref par nountenue, come davowesoun, et si⁹ ne poay jeo pas en le primer bref.—SCHAR. *Visus non est necessarius*, &c.—Et il respondi outre.¹⁰

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(14.)¹¹ § Le Priour de la Trinite de Londres porta bref de Custumes et de Services vers Labbe de Colecestre,¹² et counta qil tient de luy par certein services, et par relief apres chescun voidance, fut ceo par mort ou autrement, &c., et lia la seisine par my sa meyn demene.—Et Labbe ne put dedire.—Per quei fut agarde qe le Priour¹⁴ recoverast, et ses damages, et qe execucion cesse tange enquis soit¹⁵ de la collusioun.¹⁶—Et en mesme le terme Labbe Deverike recoversa une annuite vers le Priour de Hauteprise, et Court nenquist pas de la collusioun.¹⁷

Custumes
et Services
entre
gentz de
religion
dune part
et dautre.
Unqore
fuit enquis
de la col-
lusion.¹²
[Fitz.,
Collusion,
22.]

¹ 25,184, demande par altre bref.

² The words de terre are omitted from L.

³ 25,184, sanz.

⁴ All the MSS. except L., pounce.

⁵ ore is omitted from 25,184.

⁶ All the MSS. except L., par.

⁷ Harl., ja; 22,552 and 25,184, jeo.

⁸ 22,552, nabateray, instead of jeo abaterai.

⁹ 22,552, ceo.

¹⁰ The last sentence is from 25,184 alone.

¹¹ From L., Harl., 22,552, and 21,584, and compared with the record, *Placita de Banco*, Hil., 17 Edw. III., R^o 94. The proceedings appear there practically as stated in the report. The Prior remitted

the damages. Upon award of the *Quale jus* it was found that there was no collusion, and the Prior therefore had execution.

¹² The words of the marginal note subsequent to Services are from 25,184 alone.

¹³ L., Clocestre.

¹⁴ 22,552, pleintif.

¹⁵ soit is omitted from Harl.

¹⁶ The report ends here in Harl.

¹⁷ The record of the case to which reference is here made appears in the *Placita de Banco*, Hil., 17 Edw. III., R^o 818. The Prior of Haltemprice confessed the action, judgment was given for the Abbot, and there was no *Quale jus* awarded, and no enquiry as o collusion.

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Waste.
Hilary
Term in
the 7th
year,
above,¹
agrees.

(15.) § An inquest was taken at *Nisi prius*, and on the waste there found judgment was given in the Bench, and the plaintiff had an *Elegit* and the Sheriff returned that the defendant had nothing. And execution was awarded in the lands which the defendant had on the day of the taking of the inquest, &c.

Process.
Note as to
Capias
granted
without
any
Exigent.

(16.) § Note that a Sheriff after he had recorded the parol in a Replevin, by *Pone*, into the Bench, nevertheless on a non-suit in the County Court awarded the Return. Thereupon it was commanded to attach the Sheriff to answer as to the contempt. And afterwards a *Capias* issued, and then an *Alias Capias*, and a *Pluries Capias*.—And *Gaynesford* now prayed the Exigent.—HILARY. You shall not have anything more from us than always the *Capias*.

Aid-prayer
where it
was said
that the
deed of a
tenant,
made
pending
my writ,
ought not
to put me
to delay.

(17.) § *Derworthy*, for a tenant to a *Præcipe*, prayed aid of the person by whose lease he held for term of life.—*Pulteney* said that the tenant had a fee on the day

¹ Y. B. Hil. 7 Edw. III., fo. 7, No. 18.

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(15.)¹ § Enqueste prise par *Nisi prius*, et sur² A.D. 1842-3.
le wast treve illoeges⁴ jugement fut rendu en Baunk, Wast.
et le plaignant avoit *Elegit*,⁵ et le Vicounte retourna *Concordat*
qil navoit rien. Et fut agarde execucion en les *supra*,
terres qil avoit jour de lenqueste prise, &c. *anno vij^o*,
Termino
Hillarii.³
[Fitz.,
Execucion,
52.]

(16.)⁶ § *Nota*, qe le Vicounte apres ceo qil avoit Proces.
recorde le paroule en prise des avers par⁸ le *Pone* *Nota de*
in Baunk, *non obstante* le Vicounte sur nounsuite *Capias*
en Counte agarde retourne. Sour ceo comaunde fut sanz
dattacher le Vicounte a respondre del contempste. *Exigende*.⁷
Et apres *Capias*⁹ issit, et puis *Sicut alias*, et *Sicut* *Proces*,
pluries.—Et *Gayn*. ore pria *Lexigende*.—HILL. Vous 168.]
naverez nient plus¹⁰ de nous forsque touz jours¹¹ le
Capias.⁹

(17.)⁶ § *Derworthi* pur un¹² tenant a un *Præcipe* Eide
pria eide de celuy de qi lees il tient a terme de priere, ou
vie.—*Pult*.¹⁴ dit¹⁵ qe¹⁶ le tenant avoit fee jour de dit est qe
fet du

¹ From L., Harl., 22,552, and 25,184. The record of this case seems to be on R^o 121 of the *Placita de Banco* of Hil., 17 Edw. III., where it appears that the action had been brought by Edmund Hakelut, knight, against Thomas de Yeddeven, knight. After the Sheriff's return to the *Elegit* that the defendant had nothing "testatum est hic, ex parte " *prædicti Edmundi quod idem* " *Thomas alias, scilicet die* " *quando inquisitio inde capta fuit* " *habuit terras et tenementa,* " *bona et catalla ad sufficientiam,*" and therefore the second writ of execution was awarded.

² The marginal note is from 25,184. In L. and Harl. it is *Nota* and in 22,552 simply *Wast*.

³ Harl., sur ceo.

⁴ illoeges is omitted from L.

⁵ 25,184, *alleggea*. In L., the words le tenaunt avoit aliene are substituted for le plaignant avoit *Elegit*.

⁶ From L., Harl., 22,552, and 25,184. quel il fet pendant mon bref, ne moy deit mye mettre en delaye.¹²

⁷ The marginal note is from [Fitz., 25,184. In L. and Harl. it is *Nota*, in 22,552 *Processus*. *Counterplee de Ayde*, 2.]

⁸ 25,184, *de*.

⁹ Harl., *Cape*.

¹⁰ plus is omitted from L.

¹¹ The words touz jours are omitted from L.

¹² The words of the marginal note subsequent to *Eide priere* are from 25,184 alone. In Harl. the note is *Præcipe*, &c.

¹³ 22,552, *le*.

¹⁴ 25,184, *Pole*.

¹⁵ dit is from L. alone.

¹⁶ qe is omitted from 22,552 and 25,184.

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A.D. 1342-3. of the purchase of the writ; ready, &c.—*Derworthy*. That is not a counterplea, if you do not answer as to the tenancy which we have now: for even though the tenant had nothing on the day of the purchase of the writ, and have purchased, pending the writ, that purchase makes the writ good; and, if his purchase was only for term of life, he would have aid in respect of that tenancy purchased while the writ was pending.—*SHARSHULLE*. If such be your case, plead it.—*Pulteney*. If the tenant had a fee on the day of the purchase of the writ, &c., and, pending the writ, have aliened and repurchased, it is not right, though that last purchase be only for term of life, that it should put me to delay by Aid-prayer.—Therefore *Derworthy* was put to answer.

Assise of
Novel
Disseisin,
where,
after the
death of
the
husband,
who held
jointly
with his
wife, she
accepted,
from one
who
claimed
wardship,
a third
part to
hold to the
name of

(18.) § At Cambridge, before *SHARSHULLE*, it was found by verdict that a husband aliened the entirety, whereof two parts, in respect of which the plaint is made, are parcel, and took back an estate to himself and his wife, who is now plaintiff, and to the heirs of their two bodies begotten; the husband died, and, after his death, the lord claimed wardship by reason of the non-age of the heir of the husband, as understanding that the husband died sole seised, and seized the land in the name of wardship, and leased the wardship to one J., who assigned a third part to the plaintiff in the name of dower; and the jurors said

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bref purchase; prest, &c.—*Derworthi*. Ceo nest pas countreplee, si vous ne responez a la¹ tenaunce que nous avoms² ore: qar mesqe le tenant navoit rien jour de bref purchase, et pendant le bref il eit purchase, cel purchase fait le bref bon; et si son purchase ne fut forsque a³ terme de vie, il avereit eide de cele tenaunce purchase pendant le bref.—*SCHAR*. Si vostre cas soit tiel, pledes le.—*Pult*. Si le tenant avoit fee jour de bref purchase,⁴ &c., et pendant le bref eit aliene et repurchase, nest pas resoun, coment qe cele darreine purchase⁵ soit⁶ forsque pur terme⁷ de vie, qe ceo me⁸ mette en delay par Eide priere.—Par quei *Derworthi* fut mys de respondre.

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1342-3.

(18.)⁹ § A Cauntebrige, devant *SCHAR*., trove fut par verdit qe le baroun aliena lentier,¹⁰ dount les deux parties, de qi¹¹ la plainte est faite, sount parcelle, et reprist estat a luy et sa femme, qest ore pleintif, et a les heires de lour deux¹² corps engendres; le baroun morust,¹³ apres qi mort le seigneur clama¹⁴ garde par nounage leire le baroun,¹⁵ entendaunt qe le baroun¹⁶ morust¹³ soul seisi, et happa la terre en noun de garde, et lessa la garde a un J., le quel assigna a la pleintif la terce partie en noun de dower; et disoient qele¹⁷ prist

Assina
Nove
Disseisina,
ou, apres
la mort le
baron, qe
tient yoint
ove sa
femme, ele
resceut
dune qe
cleyma
garde la
tercie par-
tie a tener
en noun

¹ 22,552, and 25,184, sa.² All the MSS. except L., qil ad instead of qe nous avoms.³ Harl., and 22,552, pur.⁴ purchase is omitted from 22,552.⁵ L., repurchase, instead of darreine purchase.⁶ 22,552, soit fait.⁷ The words pur terme are omitted from 25,184.⁸ 22,552, moi. The word is omitted from Harl. and 25,184.⁹ From L., Harl., 22,552, and 25,184.¹⁰ lentier is omitted from 22,552.¹¹ L., dount, instead of de qi.¹² deux is from L. alone.¹³ Harl., moruyt.¹⁴ 22,552, clamant.¹⁵ The words le baroun are omitted from L. and Harl.¹⁶ 22,552 and 25,184, qil, instead of qe le baroun.¹⁷ L., qe la femme.

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dower, but
without a
deed. And
that will
not oust
her from
having an
assise in
respect of
the two
other
parts.
Observe,
neverthe-
less, that
the
husband's
sole
seisin, at
one time
after the
marriage,
was found,
in respect
of which
she was
dowable.
And
note that
it was said
in respect
of the
third part
that she
was in her
first estate,
and not as
tenant in
dower.
Note.

that she took 100 shillings in order that she might hold herself paid in full. And the Assise was examined as to whether she took the dower by deed indented, or whether she released by any deed her right in the two parts, and it was found that she did not. And it was asked of the Assise whether it appeared to them that she was disseised, and they said that it did.—And SHARSHULLE adjourned them before himself and his fellows at Westminster.—And there HILLARY said that, according to the fact stated by the Assise, it was found that the woman was disseised, and they had afterwards expressly stated that she was disseised.—*Pulteney*. By their original verdict there is found a fact which proves that she was not disseised: for since she, being of full age, accepted dower, she shall hold the third part of that estate, and, if the third part, therefore, having regard to two parts, she will be ousted from an assise, because dower relates to the whole. And suppose that any one being disseised takes back an estate from his disseisor for term of life, he shall never be admitted to claim any other estate; no more in this case, since she accepts dower of the third part which relates to the whole, shall she be admitted by plea to claim any other estate, except as wife of her husband. And we have the same advantage by verdict, since the tenant is within age.—HILLARY. If a woman take an estate for term of life from her disseisor without specialty, she is in her first estate; so also is she in this case, and not in an estate of dower.—[*W.*] *Thorpe, ad idem.*

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c. s. pur ceo qele se tendreit¹ paie. Et fut examine si la femme prist le² dowere par fait endente, ou si ele releassa par ascun fait soun dreit en les deux parties, et fuit trove qe noun. Et demande fut de lassise⁴ si lour sembleroit qele fut disseisi, [qe disoient qoyl.—Et SCHAR.⁵ les ajourna devant luy mesme et ses compaignouns a Westmestre.—Et illoeqes⁶ HILL. dit qe par le fait⁷ qe lassise ad dit⁸ trove fut qe la femme fuit disseisie,⁹ et puis ount il dit expressement qele fut disseisi.—Pult. Par lour primer verdit est trove un fait qe prove¹¹ qele ne fut pas disseisi: qar qant ele de plein age resceut dowere, ele tendra la terce partie de cel estat, et, si la terce partie, *ergo*, eiaunt regarde a deux parties, ele sostera dassise, pur ceo qe dowere refiert a tout. Et mettez qe homme qe soit disseisi reprent estat de soun disseisour a terme de vie, jammes ne serra resceu de clamer autre estat; ne nient plus en ceo cas, del houre qele accepte dowere de la terce partie qe refiert a tout, par plee ele ne serra resceu de clamer autre estat forsqe come femme soun baroun. Et mesme lavantage avoms nous par verdit, del hure qe le tenaunt est deinz age.—HILL. Si femme¹² preigne¹³ estat a terme de vie de son disseisour sanz especialte, ele est en soun primer estat; et auxi¹⁴ est ele en ceo cas, et noun pas en lestat de dowere.—*Thorpe, ad idem.*¹⁵ Ele

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de dowere,
mes sanz
fet. Et
ceo ne la
oustramyne
daver
assise de
les ij par-
ties. *Vide*
tamen qun
temps puis
les espos-
ailles fut
trove la
soule
seisine le
baron, de
quel ele
fuit dow-
able.
Et
Nota dit
fuit en
droit de la
tercie par-
tie qele
fuit en son
primer
estat, et
ne mye
come ten-
ant en
dowere.
*Nota.*¹ [17
Li. Ass., 3;
Fitz.,
Estoppel,
217.]

¹ The words of the marginal note subsequent to *Disseisinæ* are from 25,184 alone.

² Harl., *sestendreit*, instead of *se tendreit*.

³ L., *soun*.

⁴ The words *de lassise* are omitted from L.

⁵ 25,184, SCHARD.

⁶ The words *Et illoeqes* are omitted from L.

⁷ L., *verdit*.

⁸ L., *done*.

⁹ Harl., *seisi*.

¹⁰ The words between brackets are omitted from 22,552.

¹¹ The words *qe prove* are omitted from L.

¹² 25,184, *homme*.

¹³ L., *prent*.

¹⁴ *auxynt*.

¹⁵ The words *ad idem* are omitted from 25,184.

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She cannot hold in dower, since her husband could not endow her, nor could her entry be counted as being through him; but if she had recovered dower, she would be bound by the record so that she could not say that her estate was other, and yet she would not be tenant in dower because she was not dowable.—*R. Thorpe*. Certainly she would be, and in this case she would be dowable at her election: for she was dowable in respect of the first possession which her husband had in fee, and when, being of full age, she accepted dower, she elected to hold as of that first estate, and therefore she ought not to be adjudged tenant of any other estate; besides, it was found that she accepted 100 shillings for the two parts, and that is equivalent to a release.—[*W.*] *Thorpe*. Certainly in this case she is not dowable, since at a later time she held jointly with her husband; and suppose that after her decease the issue in tail were to enter, would he not claim by his tenancy according to the entail, notwithstanding the assignment of dower made to his mother, and rebut anyone else on a writ of Intrusion?—[*R.*] *Thorpe*. That is no wonder: for acceptance will cause a prejudice to the person who is a party to it, for his life, but not to his heir, just as if one who is disseised receive homage of his disseisor, he is barred for his life, but his heir is not barred.—*SHARSHULLE*. We have spoken to the whole of the Council, and it appears to them that she cannot be barred.—And therefore the Court adjudged that she should recover her seisin.

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ne poet tener en dowere, quant¹ soun baroun ne la put dower, ne soun entrer purreit estre² counte par my³ luy; mes si ele avoit recoveri dowere, ele serreit lie par recorde qele ne purreit dire qe son estat fut autre, et si ne serreit ele pas tenant en dowere pur ceo qele ne fut pas dowable.—*R. Thorpe*. Certes si serreit, et⁴ en ceo cas ele serreit dowable a sa eslite⁵: qar de⁶ la primere possessioun qe soun baroun avoit de fee, ele fut dowable, et quant de plein age ele avoit resceu dowere, ele eslust de tener de cel primer estat, par quei ele ne deit⁷ estre ajuge tenaunt dautre estat; estre⁸ ceo, trove fut qele resceut c. s. pur les deux parties, qe countrevaut relees.—*Thorpe*. Certes⁹ en ceo cas ele nest pas dowable, quant de puisne temps ele tient joint ove soun baroun; et jeo pose qapres soun deces¹⁰ lissue en la taille entrast, ne clamereit il par la taille en sa tenaunce, *non obstante* lassignment de dowere fait¹¹ a sa mere, et rebotereit lautre a bref de Intrusioun?—*Thorpe*. *Non est mirum*: qar accepter fra prejudice a celui qest partie pur sa vie, et noun pas a soun heire, come si homme disseisi resceyve¹² homage de son disseisor, il est barre pur sa vie, et son heire nest pas barre.—*SCHAR*.¹³ Nous avoms parle a tout¹⁴ le Conseil,¹⁵ et lour semble qele nest pas barrable.—Par quei agarda la COURT¹⁶ qele recoverast sa seisine.

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1342-3.¹ 25,184, qar.² The words purreit estre are omitted from L. and Harl.³ my is from L. alone.⁴ et is omitted from L.⁵ The words ele serreit dowable a sa eslite are omitted from L.⁶ L., en.⁷ L., dust.⁸ 25,184, oustre.⁹ Certes is omitted from L.¹⁰ L., decesse; Harl., descees.¹¹ L., qe fut.¹² Harl., and 25,184, resceit.¹³ L., SCHAR.¹⁴ Harl., tote.¹⁵ L., Consail; Harl., Conseille.¹⁶ 25,184, agarderent, instead of agarda la Court.

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A.D. (19.) § *Pulteney*. There would be mischief if the
 1842-3. joinder were not allowed in this case, &c.
 Conclusion of the
 avowry.
 See above,
 Easter
 Term in
 the 15th
 year.

Replevin. § John de Tornerghe complained that the Abbot of
 Furness tortiously took his beasts.—*W. Thorpe* avowed
 the taking for the reason that one Christiana de
 Lyndeseye held of the Abbot certain tenements, where-
 of the place of taking was parcel, by certain services,
 of which services he said that the Abbot was seised
 by the hand of Christiana as by the hand of his very
 tenant. And he made the descent from Christiana to
 William as son and heir, and from William to Ingram
 as to brother and heir. And the Abbot avowed on
 Ingram as on his very tenant in the place, &c., for
 the services in arrear.—To this John said that he
 fully admitted that Christiana held the same tenements
 of the Abbot, but he said by less services than *W.*
Thorpe supposed in the avowry. And he also fully
 admitted the descent to William as to son and heir,
 but he said that this William granted a moiety of the
 barony of Ulverston, whereof these tenements were
 parcel, to William son of William de Coucy, to hold of
 the chief lords of the fee, by virtue of which grant he said
 that the plaintiff attorned, because he held the demesne

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(19.)¹ § *Pult.* Meschief serreit si le joindre ne fut pas suffert en ceo cas, &c. A.D. 1342-3.
*Residuum de lavoere. Supra Paschæ quinto-decimo.*¹

§ Johan² de Tornerghe se pleint qe Labbe de Furneis a tort prist ses avers.—*W. Thorpe* avowa la prise pur la resoun qe une Christiene de Lyndeseye tient de luy certains tenements, dont le lieu, &c., par certains services, des queux services il dit qe Labbe fuit seisi par la main Christiene come par my la main de son verrey tenaunt. Et de Christiene fist la descente a W. come fitz et heire, et de W. a Ingram come a frere et heire. Et pur les services arere Labbe avowa sur Ingram come sur son verrey tenaunt en le lieu, &c.—A quei Johan dit qil conust bien qe Christiene tient mesmes les tenements de Labbe, mes il dit qe par meindre service qil avoit suppose par lavowere. Et auxi il conust bien la descente a William come a fitz et heire, mes il dit qe celui W. graunta la moite de la baronie de Ulverestone, de quei ceux tenementz fuerent parceles, a William le fitz William de Coucy, a tener de chiefs seignurs de fee, par vertu de quel grant il dit qil attourna, pur ceo qil tient le demene *Replegiari.*

¹ This is part of the second of the reports of No. 45 of Easter Term, 15 Edward III., which report has already been published in its entirety in the Rolls Series. This conclusion beginning "*Pult. Meschief serreit,*" &c., printed as of Hilary Term 17 Edward III. in the older editions of the Year Books, and appearing as of that term in some of the MSS., will be found at p. 121 of the Rolls edition, Easter—Michaelmas 15 Edw. III.

² This report, which appears as No. 52 in the old editions, is practically a third report of the case No. 45 of Easter Term 15 Edw. III. It is for some lines (down to the words *ut patet Paschæ xv*) an abridgment of the first of the two reports of that case, but afterwards becomes different from both. No MS. of it has been found, but it has been corrected by the record *Placita de Banco* Easter 15 Edw. III., R^o 191 d.

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of this William. And also William de Coucy came thereupon, and admitted that John de Tornerghe held the same tenements of him, and said that he held over of the Abbot, by the feoffment of William son of Christiana, by a less service, and joined himself to John his tenant. And those two said that they had many times tendered to the Abbot the services due for the same tenements; and they demanded judgment whether the Abbot could avow on any other person than William, as appears in Easter Term in the 15th year.—*Thorpe*. You see plainly, how John is a stranger to our avowry; wherefore it does not lie in his mouth to plead as to the quantity of the services. And, as to the joinder of William de Coucy, Sir, he is a stranger to our avowry, whereas joinder cannot be given by law except to the person upon whom we have avowed; wherefore, for default of answer, we demand judgment, and pray the Return.—*Blaykeston*. If this joinder be not admitted, see at what mischief we shall be: for, if there be lord, mesne, and tenant, and the mesne has paid the services due to the chief lord, and afterwards the lord distrain the tenant in demesne for the same services, and avow on a stranger, who possibly never had anything in the tenancy, if the very mesne cannot be joined with his tenant, they can never have an answer to the avowry, and therefore the tenant will be charged a second time with the rent, and that the law does not allow.—*SHARDELOWE*. I say plainly that according to law the person who is in such a case will have a good answer by saying “Nothing in arrear,” notwithstanding that he is a stranger to the avowry.—And *WILLOUGHBY* agreed to this, contrary to the opinion of the greater number. *Stouford*. The joinder is, according to law, to the person who is privy to the avowry inasmuch as he and his ancestors have held of the avowant and his ancestors; therefore, although the avowant avow on another rather than on him, the privity between them

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de celuy William. Et auxi William de Coucy vient sur ceo, et conust qe Johan de Tornerghe tient de luy mesmes les tenements, et dit qil tient outre de Labbe, par le feffement William le fitz Christiene par meindre service, et se joint a J. son tenaunt. Et eux deux disoient qil avoient sovent proffri al Abbe les services dues de mesmes les tenements; et demanderent jugement si sur autre qe sur luy poet il avower, *ut patet Pasche xv.—Thorpe*. Vous veiez bien coment Johan est estraunge a nostre avowere; par quei en sa bouche ne gist il pas de pleder a la quantite des services. Et quant a joindre de William de Coucy, Sire, il est estraunge a nostre avowere, ou joindre ne poet pas estre done par ley forsque a celuy sur qi nous avoms avowe; par quei, pur defect de respons, nous demandoms jugement, et prioms retourne.—*Blayk*. Si cest joindre ne soit resceu, veiez a quel meschief nous serroms: qar, si soient seignur, mene, et tenant, et le mene ad paye les services dues al chief seignur, et apres le seignur pur mesmes les services destreigne le tenaunt en demene, et avowe sur un estraunge, qe par cas unques riens navoit en la tenaunce, si le verray mene ne poet pas joindre a son tenant, jammes ne pount eux aver respons a lavowere, et par tant serra le tenant charge autrefoitz de la rente, quele chose la ley ne soeffre point.—*SCHARD*. Jeo die bien en ley qe celuy en tiel cas avera bon respons a dire rien arere, *non obstante* qil est estraunge a lavowere.—Et a ceo acorda *WILBY. contra opinionem plurimorum.—Stouf*. Le joindre en ley est a cesti qest prive a lavowere par tant qe luy et ses ancestres ount tenus de lavowant et de ses ancestres; donques coment qe lavowant avowe sur autre qe sur luy, par tant la private

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is not thereby defeated, and, if the privity remain, the joinder is by law given to the tenant. Now William who joins himself makes himself privy to the avowant by the matter which he alleges; so it is right that he should be admitted to join.—*SHARSHULLE*. For the same reason for which you suppose that we are to admit William to join, we should have to admit the joinder of another who was not a party to this avowry: for suppose another were to come and plead the same plea that William now pleads, which of the two would be heard?—*Stouford*. It would be at the pleasure of the plaintiff which of them he would allow to join him: for if he were to admit a person to join him other than this one who was very mesne between him and the avowant, it would be to his own disadvantage, because they would not then be able to plead to the Abbot's avowry so well as those can who are the Abbot's very tenants; wherefore, &c.—*Pulteney*. Sir, in case the lord distrain the tenant in demesne for the services of the mesne, when the mesne has paid them, the plaintiff will come to the mesne, and will pray him to join with himself, and, if he will not join, the tenant will have a good writ of Mesne against him, for I can then say safely that I am distrained through his default inasmuch as he will not join, because, if he had joined himself with me, he and I would have been able to have an answer to the avowry, whereas I alone, before the joinder, could not have had that answer. But now the mesne is here ready to join, and to do that which in him lies; wherefore, if this joinder shall not be admitted, we are ousted from our own writ against William, and also from an answer to the avowry, which is not right.—*R. Thorpe*. You shall never have a writ of Mesne in the case which you have put, but only where you are distrained for the services of the mesne which are in arrear. And, Sir, in case the lord distrain you for the services of the mesne which are not due in respect of your tenancy,

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entre eux nest pas defete, et si la privete remeigne, le joindre de ley est done al tenaunt. Ore William qe se joint par la chose qil ad allegge soi fait prive al avowant; issint il est resoun qil soit resceu de joindre.—*SCHAR.* Par mesme la resoun qe nous resceiveroms William de joindre nous resceiveroms le joindre dun autre qe ne fuit pas partie a ceste avowere: qar jeo pose qe un autre vient de pleder mesme le plee qe William ore plede, le quel deux serreit escote?—*Stouf.* Ceo serra a la volunte le pleintif le quel deux il voille soeffrir de joindre a luy: qar sil resceit autre de joindre qe cesti qe fuit verrey mene entre luy et lavowant en son desavantage serreit il, pur ceo qe ceux ne purreint pas adonques pleder a lavowere Labbe si bien come ils pount qe sont verreys tenaunts al Abbe; par quei, &c.—*Pult.* Sire, en cas qe le seignur destreigne le tenant en demene pur les services le mene, la ou le mene les ad paye, le pleintif viendra al mene et luy priera qil se joigne a luy, et, sil ne voet pas joindre, le tenant avera vers luy bon bref de Mene, qar jeo puisse dire salvement qe jeo sue destreint en son default en tant qil ne se voet joindre, car sil ust joint a moy, luy et jeo purroms aver respons a lavowere, la ou jeo soule, devant le joindre, ne purra pas aver cel respons. Mes ore cy le mene est prest de joindre, et faire ceo qe en luy est; par quei, si cest joindre ne serra pas resceu, nous sumes ouste de nostre bref demene devers William, et auxi de respons a lavowere, qe nest pas resoun.—*R. Thorpe.* Jammes naveres bref de Mene en le cas qe vous aves mis, mes soulement ou vous estes destreint pur les services le mesme queux sont arere. Et, Sire, en cas qe le seignur vous destreigne pur les services le mene¹ les queux ne sont pas dues de vostre tenance,

A.D.
1342-3.

¹ The words le mene are omitted from the edition of 1679.

No. 20.

A.D.
1342-3.

you can have a good writ of Trespass against him and recover your damages.—And SHARSHULLE and WILLOUGHBY agreed to this, contrary to the opinion of the greater number.—Therefore *Quære*.—SHARSHULLE. The joinder is given at common law, but only for the person upon whom the lord frames his avowry; therefore, since the person who now wishes to join himself is a stranger to the avowry, he is not aided by the common law; and no joinder is given to him by the Statute¹; wherefore, &c.—*Moubray*. Sir, when you see the mischief to be so outrageous in our behalf, if this joinder be not admitted, it seems that you will admit us in amendment of the common law, as you did in another case at common law, when an infant under age was vouched, and the demandant said that he was of full age, and prayed that he might be viewed, and you granted to the tenant a *Venire facias*, and after that a *Distringas*, and an *Alias Distringas*, and a *Pluries Distringas*, and so that process was infinite, by reason of which mischief you then granted to the tenant a *Sequatur* [*suo periculo*] if the infant should not come at the *Pluries Distringas*; wherefore it seems that in this case also you can well, by reason of this great mischief, amend the law, &c.

Quid juris
Clamat
sued by a
man of
religion,
where the
other was
put to
claim in-
asmuch as
attorn-
ment does
not forfeit
her ten-
ancy.

(20.) § The Abbot of Reading sued against a woman as tenant in dower, who alleged that the Abbot was a man of Religion, and showed that there were several mesnes, &c., for which reason, without their license and that of the King, she ought not to claim, nor to attorn, because it would be a forfeiture of her tenancy to attorn, as that would be a cause of amortisation.—And the COURT said to her that she must claim, and that attornment is not a forfeiture.—And she alleged that dower

¹ 13 Edw. I. (Westm. 2), c. 9.

No. 20.

vous poies aver vers luy un bon bref de Trespas, et recoverir vos damages.—Et a ceo acorderent SCHAR. et WILBY. *contra opinionem plurimorum*.—*Ideo Quere*.—SCHAR. Le joindre est done al comune ley, et ceo soulement pur cesti sur qi le seigneur conceust savowere; donques quant cely qe ore se voleit joindre est estraunge a lavowere, il nest pas eide par le comune ley; et par lestatut nul joindre a luy est done; par quei, &c.—*Moubray*. Sire, quant vous veiez le meschief si outre de nostre part, si cest joindre ne soit resceu, il semble qe vous nous resceveres en amendement de le comune ley, come vous fistes en autre cas a la comune ley, quant un enfant deinz age fuit vouche, et le demandant dit qil fuit de plein age, et pria qil fuit vieu, et vous grauntastes al tenant un *Venire facias*, et apres un *Distringas*, et *Distringas sicut alias*, et *pluries*, et issint fuit cel proces infinit, pur quel meschief vous grauntastes ore al tenant un *Sequatur* si lenfant ne vient pas al *Distringas sicut pluries*; par quei auxi semble en ceo cas qe vous bien poiez, pur cel graunt meschief, amender le ley, &c.

A.D.
1342-3.

(20.)¹ § Labbe de Redynges suist vers une femme, com³ tenant en dowere, qe alleggea Labbe estre homme de Religioun, et moustra qil y sount plusours menes, &c., par quei saunz conge deux, et de Roi, ele ne deit⁴ clamer ne attourner,⁵ qar ceo serreit forfaiture de sa tenaunce dattourner, qe durreit⁶ cause damortissement.—Et la COURT luy dit qil covient de clamer, et lattournement nest pas forfaiture.—Et ele alleggea⁷ qe dowere la fuit assigne

Quid juris
clamat suy
par
homme de
religioun,
ou lautre
fuit mys a
clamer en
tange
attourne-
ment ne
forfait
mye sa
tenance.³
[Fitz.,
Quid juris
clamat,
25.]

¹ From L., Harl., 22,552, and 25,184.

² The marginal note subsequent to the word *clamat* is from 25,184 alone.

³ com is from Harl. alone.

⁴ L., dust.

⁵ The words ne attourner are omitted from L.

⁶ L., dirreit; Harl., dorreit.

⁷ L., and Harl., assigna.

No. 21.

A.D. 1342-3. was assigned to her by deed indented, wherefore the person who assigned it is bound to warrant and acquit; and she said that if the Abbot would acknowledge the warranty, and acquit, she was ready to attorn.

Waste assigned by reason of quarrying out iron-stone in a mine, and also sea-coals. And the Court was perfectly clear that (21.) § John de Handlo and Maud his wife brought a writ of Waste against Hugh de Aldenham, and assigned the waste in a messuage, to wit, in pulling down one hall, one chamber, one barn, and one ox-stall, in land by digging iron-stone, sea-coal, &c., and in a garden, and wood, &c.—*Pulteney*. We tell you that by this deed they leased to us the messuage in which the waste is assigned, so that we should be able to make our profit out of the dwellings therein, excepting one chamber with cellar, at the end of the hall, which has been kept

No. 21.

par fait endente, par quei celui qe lassigna est
tenuz de garrauntir et acquiter; [et si Labbe voille
conustre la garrauntie, et lacquiter],¹ prest est dat-
tourner.²

A.D.
1342-3.

(21.)³ § Johan de Handlo et Maude sa femme
porterent bref de Wast vers Hughe de Aldenham,⁴ et
assignerent le wast en mies,⁵ saver, en labatre dune
sale, une chaumbre, grange, boverie, en terre par⁶
fouwer de pieres⁷ de ferre,⁸ de carbouns de meer,
&c., et gardeyn, et bois, &c.⁹—*Pult.* Nous vous dioms¹⁰
qe par ceo fait il nous lesserent le mies en quel
le wast est assigne,¹¹ issint qe nous purroms nostre
profit faire des mesouns leinz,¹² sauf dune chaumbre
et celer,¹³ a bout¹⁴ de la sale, la quele est

Wast
assigne
par cause
de fowere
des peres
en quarere
minere de
tere, et
auxint
de car-
bouns et
de meere.
Et pro
certo in-
tentio
CURLE fuit

¹ The words between brackets
are omitted from L.

² dattourner is omitted from L.

³ From L., Harl., 22,552, and
25,184, but corrected by the record
Placita de Banco, Hil., 17 Edw. III.,
R^o 140 d. It there appears that
the action was brought by John de
Handlo against Hugh de Alden-
ham.

⁴ L., Eadenham; other MSS.,
Hadenham.

⁵ L., mesouns.

⁶ Harl., sur.

⁷ Harl., petres.

⁸ Harl., faire.

⁹ According to the roll the de-
claration was "quod, cum prædic-
tus Hugo tenet de ipso Johanne
"duodecim mesuagia, unum gar-
"dinum, duas carucatas terræ,
"sexaginta acras bosci, et decem
"libratas redditus cum pertinentiis
"in Duddeleye, ad vitam ipsius
"Hugonis, idem Hugo fecit vas-
"tum, venditionem, et destruc-
"tionem in tenementis prædictis,
"videlicet fodiendo in quadraginta

"acris terræ et puteos faciendo, et
"lapides ferreos et carbones mari-
"timos inde vendendo, et
"prosternendo unam aulam, et
"maeremium inde vendendo, . . .
" . . unam cameram, . . . unam
"grangiam, unam boveriam,
" . . . et unum columbare,
"et succidendo et vendendo tres-
"centas querous, centum
"fraxinos, viginti pomaria,
" et decem piros," the
value being stated in each case.

¹⁰ According to the roll the de-
fendant disclaimed all interest in
eleven out of the twelve messuages,
except the rent of them, payable
by other tenants for life, which had
been granted to him by the plain-
tiff, and he tendered an averment to
that effect. The other portions of
the plea represented on the roll are
in different order.

¹¹ 22,552, and 25,184, suppose.

¹² 22,552, ly einz; 25,184, luy
eins.

¹³ 25,184, seler.

¹⁴ 25,184, bounte.

No. 21.

A.D. 1342-3. up; judgment whether, contrary to their deed, they
 by virtue of the ought to be answered. And first he said, as to
 words "to one barn and ox-stall, that there were not any at
 make his the time of the lease, nor at any time since; ready,
 profit" a &c. And as to waste in land we tell you that they
 tenant leased to us certain acres, &c., in which there was
 could not a mine of iron-stone, and of coals, &c., together with
 sell or give away all the profits, by this deed; judgment whether they
 anything. ought to be answered. And as to 18 oak-trees, and
 And one ash-tree, he granted by his deed, &c., he granted
 SHARDE- to us by his deed, &c., that we might fell them for
 LOWE said the repair of a mill, &c.; judgment. As to waste in
 that the case was the same

No. 21.

sustenué¹; jugement, si countre lour fait ils deyvent estre respondu. Et primes il dit, quant a une graunge et boverie, qil y avoit nul au temps del lees, ne unques puis; prest, &c.² Et quant a wast en terre, nous vous dioms qils nous lesserent certains acres, &c., en queux il y avoit minere de pierre³ de⁴ ferre⁵ et de carbouns, &c., ove touz les profits, par ceo fait; jugement sils deivent estre respondu.⁶ Et quant a xvij keines, et un freyne, il nous graunta par son fait, &c., qe nous puissoms abatre en amende-ment dun molin,⁷ &c.; jugement.⁸ Et a wast en

A.D.

1342-3.

qe par
vertue de
cele parole
a faire son
profit il ne
purreit
rien
vendre ne
doner.
Et
SCHARD.
dit qil fuit
mesme le
cas en

¹ The roll, "quoad unam aulam, " unam cameram, et unum columbare, dicit quod illæ fuerunt domus ruinosæ, et incipientes corruiere, et prædictus Johannes per scriptum suum concessit, et licentiam dedit ipsi Hugoni quod de illis commodum suum facere posset, et de omnibus domibus in eodem mesuagio existentibus, salvo quod prædictus Hugo sustentaret magnam cameram cum solarario et celario ad finem aulæ situata, quæ camera cum solarario et celario, juxta formam prædicti scripti sustentata est."

² The roll, "quoad unum mesuagium ubi prædictus Johannes assignat vastum esse factum dicit quod . . . non erat ibi aliqua grangia nec aliqua boveria tempore dimissionis sibi factæ nec unquam post, et hoc paratus est verificare, unde petit judicium," &c.

³ L., petrez; Harl., petre.

⁴ 25, 184, et.

⁵ Harl., feer. The words de ferre et are omitted from L.

⁶ The roll, "quod in terra prædicta erat una minera ferri, et carbonum, tempore dimissionis

" ei factæ, quam mineram cum omnibus commoditatibus, libertatibus, et eysiammentis . . . prædictus Johannes per scriptum suum indentatum concessit ipsi Hugoni . . . unde petit judicium si ipse de minera prædicta ad istud breve de vasto debeat respondere."

⁷ L., moleyn.

⁸ According to the roll, the plaintiff having appointed John de Aldenham his steward "ad providendum et capiendum in tenementis quæ idem Hugo de eodem Johanne de Handloo tenuit in Duddeleye tantum maheremium quantum sufficeret ad reparationem cujusdam molendini aquatici ipsius Johannis de Handloo," sent his letters patent to the defendant "quod idem Hugo permetteret ipsum Johannem de Aldenham prosternere et capere in tenementis illis tantum maheremium, &c., per indenturam de captione illa inter ipsum Hugonem et prædictum Johannem de Aldenham faciendam, per quod idem Johannes de Aldenham prosternere fecit in prædictis gardino et bosco decem et octo

No. 21.

A.D.
1842-3.
in respect
of a
quarry,
and the
words
would
never
enable him
to take a
stone to
sell, be-
cause that
is a matter
which
naturally
sounds in
disherison.
And in
like man-
ner he said
also that
if one
leases to
me a mes-
suage to
which
estovers
are appen-
dant, with
all manner
of profits,
and all
equally to
my own
use, I shall
be able to
take, but
not to give
nor to sell,
for the rea-
son above.

a wood, that is a place where wood was growing, and it was adjoining to the garden, and they granted to us by this deed the right to cut.—*Gaynesford*. As to the barn and ox-stall, when they say that there were not any, that is tantamount to saying that no waste was committed.—This exception was not allowed.—Therefore *Gaynesford* said that he would aver that there were a barn and an ox-stall, and that waste was committed in them, and also in the chamber which they said was kept up; ready, &c. And, as to the waste in the rest of the dwellings, he has not denied the pulling down, and the selling, which results in disherison, and he had no express warrant to do this by our deed, but only to make his profit, and this common right would give him, even though he had not these special words; wherefore, on his own admission, we pray seisin and our damages. And, as to waste in land, he has not denied that he has dug and sold, the doing whereof results in disherison, for which he had no warrant by our deed, but only to make his profit, which cannot be understood more at large than to take his necessities, and not to sell,

No. 21.

bois, cest une place ou bois fuit cressaunt, et joina³ al gardeyn, et il nous graunterent⁸ par ceo fait de couper.⁴—*Gayn.* Quant a la graunge et boverie, la ou ils dient⁵ qil ny avoit nul, &c., taunt amounte ge nul wast fait.—*Non allocatur.*—Par quei *Gayn.* dist qil voleit averer qil yavoit,⁶ et ge ces furent wastes, et auxi quant a la chaumbre qils dient estre sustenue; prest, &c. Et quant⁷ al wast⁸ al remenant des mesouns, il nad pas dedit labatre et le vent, quel chiet en desheritaunce, et a quele chose faire par nostre fait il navoit pas expresse⁹ garraunt, mes seulement de faire soun profit, quele chose comune dreit¹⁰ luy durreit, tout navoit il pas cele parole especial; par quei, de sa conissaunce,¹¹ nous prioms seisine et nos damages. Et quant a wast en terre, il nad pas dedit qil nad fowe et vendu, quele chose chiet en desheritaunce, a quei par nostre fait il navoit pas garraunt, mes seulement de faire son profit, ge ne poet a plus large¹² estre entendu mes de prendre ses necessaries, et noun pas de vendre,

A.D.
1842-3.
dreit dune
quarrere,
et unges
ne en eise
de prendre
une pere
de vendre,
gar ceste
chose ge
naturel-
ment soun
en desheri-
tance. Et
sic parle
auxi si
homme
me lest un
mees a qui
estovers
sount ap-
pendants,
ove touz
maners de
profiz, et
ensemement
a mon
oepe de-
mene, jeo
purray
prendre,
mes ne

"quercus et unum fraxinum."
Profert was made of the letters
patent, and of one part of the in-
denture. "Unde petit judicium si
de captione seu succisione arbor-
um prædictarum ad istud breve
de wasto responderi debeat."

¹ The marginal note subsequent
to the word *Wast* is from 25,184
alone.

³ L., joyngna.

⁴ L., dona conge.

⁵ The roll, "quoad residuum
vasti prædicti in eisdem gardino
et bosco assignati dicit quod erat
ibidem quedam placea bosci
juncta prædictis bosco et gardino
quæ erat in placito et
calumnia erga dominum de Dud-
deleye, per quod prædictus Jo-

"hannes de Handloo, pro saluatione
et manutenentia status ipsius
Johannis de eisdem tenementis,
per scriptum suum concessit ipsi
Hugoni quod ipse prosternere
posset omnes arbores in eadem
placea crescentes, et inde com-
modum suum facere."

⁶ 22,552, dient.

⁶ L., avoit.

⁷ The words *Et quant* are from
L. alone.

⁸ The words *al wast* are not in
L.

⁹ L., expressement.

¹⁰ L. and Harl., ley.

¹¹ The words *de sa conissaunce*
are omitted from L.

¹² L., plus largement, instead of a
plus large.

mye doner
ne vendre
ratione
qui
supra.¹
[Fitz.,
Wast,
101.]

No. 21.

A.D. which results in disherison for ever; judgment.—
1342-3. *Thorpe*. Then is this your deed?—SHARSHULLE.
You must be agreed on both sides, and so we

No. 21.

ge chiet en desheritaunce a tous jours; jugement.¹—
Thorpe. Donques est ceo vostre fait?—*SCHAR.* Il
 covient dune part et dautre estre a un, et issint

A.D.
 1342-3.

¹ Gaynesford's pleading is thus represented on the roll:—"Et
 " Johannes dicit quod cum præ-
 " dictus Hugo per prædictum pla-
 " citum suum intendit præcludere
 " ipsum Johannem ab actione vasti
 " in quibusdam domibus de domi-
 " bus prædictis, et etiam in terris
 " prædictis, et hoc virtute scrip-
 " torum prædictorum
 " prædictus Hugo virtute scrip-
 " torum illorum ipsum ab actione
 " sua præcludere non potest, quia
 " dicit quod, quamvis in scriptis
 " illis fiat mentio quod prædictus
 " Hugo commodum suum de domi-
 " bus prædictis facere posset, et
 " etiam quod minera prædicta cum
 " libertatibus et aisiamementis ei con-
 " cessa fuit, hoc idem de jure
 " communi conceditur cuilibet ten-
 " enti ad terminum vite, licet nulla
 " talis clausula in scripto suo con-
 " tineatur, videlicet quod ipse com-
 " modum suum facere possit, &c.,
 " sed per hoc non est intelligen-
 " dum nec probari potest quod idem
 " Hugo vastum in terris nec domi-
 " bus prædictis facere seu quicquam
 " inde vendere nec destruere possit,
 " nisi solummodo quod ipse capere
 " debet quantum ei rationabiliter
 " sufficere potest pro eisdem tene-
 " mentis sustentandis, &c., Unde
 " ex quo prædictus Hugo superius
 " advocavit prostrationem et ven-
 " ditionem prædictarum aulæ,
 " cameræ, et columbaris, quæ
 " quidem idem Hugo dicit fuisse
 " domus ruinosas, et etiam præ-
 " dictam venditionem mineræ præ-
 " dictæ, videlicet lapidum ferreorum
 " et carbonum maritimorum, &c.,

" et in scriptis prædictis nulla fit
 " mentio quod idem Hugo aliquod
 " vastum in tenementis prædictis
 " facere posset, nec quod ipse de
 " vasto exonerari deberet, sed
 " solummodo quod ipse commodum
 " suum facere posset, quod alio
 " modo intelligi non potest nisi
 " absque vasto faciendo, &c., Unde
 " petit judicium et damna sibi
 " adjudicari. Et quoad residuum re-
 " sponsionis prædicti Hugonis, &c.,
 " videlicet ubi idem Hugo non ad-
 " juvat se per facta prædicta, &c.,
 " idem Johannes in manutentionem
 " brevis et actionis sui prædictorum
 " dicit quod ipse dimisit prædicto
 " Hugoni ad vitam suam duodecim
 " mesuagia integra, et quod erant
 " ibidem quædam grangia et
 " quædam boveria tempore dimis-
 " sionis prædictæ, et quod prædic-
 " tus Hugo fecit vastum, vendi-
 " tionem, et destructionem de præ-
 " dictis magna camera, celario, et
 " solarario, &c., prout ipse per nar-
 " rationem suam supponit. Dicit
 " etiam quod totum vastum in
 " prædictis boscis et gardinis assig-
 " natum factum est alibi et in aliis
 " locis quam in prædicta placea . .
 " . . in prædicto scripto contenta,
 " et etiam ultra prædictos decem
 " et octo quercus et fraxinum præ-
 " dictum." Issue was joined and
 " the *Venire* awarded on this ques-
 " tion of fact. " Idem dies datus est
 " partibus de audiendo judicio suo
 " quoad residuum de quo placita-
 " verunt in judicium." Nothing
 " further appears on the roll but ad-
 " journments.

No. 22.

A.D.
1342-3.

hold that you are.—[*W.*] *Thorpe*. If I lease to you a fish-pond or a fishery, with all the profits, &c., can you not fish and sell?—*R. Thorpe*. In that case an action of waste does not lie, unless they are exhausted; but if you lease to me a wood, with the profits, can I cut and sell all the wood? as meaning to say that he could not.—[*W.*] *Thorpe*. Yes, it seems that you can: for you can cut for your own use, and construct dwellings in places other than the messuage to which the wood is appendant, and consequently you can give and sell.—*R. Thorpe*. Certainly not; you shall never have anything but that which common right gives you, for if you could take in such a general manner every kind of profit, you could consequently aliene.—[*W.*] *Thorpe*. We demand judgment, inasmuch as he has admitted that, at the time of the lease there was an iron-stone and coal mine, and that was leased to us, with the profits, by his deed, whether, contrary to that deed, he ought to be answered.—*SHARSHULLE*. What profit could one have of a mine, when it is leased to one, except by selling, &c.?—*Thorpe*. He will have his necessities without making sale or gift.

Waste
brought
by a writ
in the
words "A.
and his
wife,"
where the
husband

(22.) § Richard de Cogan and Mary his wife brought a writ of Waste, supposing the waste to be to the disherison of Richard. And it was supposed that one William leased, and afterwards granted the reversion to the tenant

No. 22.

tenoms nous qe vous estes.—*Thorpe*. Si jeo vous lesse¹ un vivere ou une pescherie, ove touz les profits, &c., ne poietz pescher et vendre?—*R. Thorpe*. De ceo ne gist pas accion de wast, sils ne fuissent suys²; mes si vous moy lessez un bois, ove les profits, puisse jeo couper et vendre tout le boys? *Quasi diceret non*.—*Thorpe*. Si semble qe vous poietz: car vous poietz couper a vostre oeps demene, et faire mesouns aillours qen le mies a quei le bois est appendant, et *per consequens* vous poietz³ doner et vendre.—*R. Thorpe*. Nanil certes; vous naverez forsque ceo qe comune dreit⁴ vous doune, car si vous preissez si generalment chescun manere de profit, *per consequens* vous puissez alier.⁵—*Thorpe*. Nous demandoms jugement, desicome il ad⁶ conu qal temps de lees il y avoit minere de pierre,⁷ et de carbouns, et ceo nous fut lesse, ove les profits, par son fait, sil deyve countre ceo fait estre respendu.—*SCHAR*. Quel profit averoit homme dun minere⁸ quant ceo luy est lesse, autre qe vendre, &c.?—*Thorpe*. Il avera ses necessaries sans vent faire ou doun.⁹

A.D.
1342-3.

(22.)¹⁰ § Richard Cogan et Marie¹¹ sa feme por-
terent bref de Wast, supposant le¹² wast a la des-
heritaunce Richard.¹³ Et fut suppose qun William
lessa, et puis graunta la reversion al tenaunt vers

Wast
par le bref
"A. et sa
femme,"
par la ou
le baroun¹ L. and Harl., usse lesse.² 22,552, siewes; 25,184, sywys.³ L., purretz.⁴ L., lei.⁵ L., aliner; 22,552, avener⁶ 25,184, est.⁷ L., petrez.⁸ L., vivere; Harl., minerere.⁹ L., vender ou douner, instead of vent faire ou doun.¹⁰ From L., Harl., 22,552, and 25,184, but corrected by the record, *Placito de Banco*, Hil. 17 Edw. III. B^o 158. It there appears that the

action was brought by Richard de Cogan and Mary his wife, against John Mareschal and Matilda his wife, in respect of waste in tenements held by them, which were one manor, one messuage, one carucate of land, six acres of meadow, six acres of wood, and 10s. of rent in the county of Somerset.

¹¹ L., Mariote.¹² 22,552, simple, instead of supposant le.¹³ L., le baroun.

No. 22.

A.D. 1342-3. against whom the writ, &c., for the term of her life, with remainder to Richard and his wife and the heirs of Richard.—*Thorpe*. Judgment of the writ which is brought for the woman to whose disherison waste cannot be committed, and consequently the writ does not lie for her: for if she were sole, she would not have the writ, nor consequently now.—*Pulteney*. That plea is to the action.—*SHARSHULLE*, as to that point, adjudged the writ good.—*Thorpe*. Sir, you see plainly how they make themselves strangers purchasing by way of remainder, and by the Statute³ the writ is given only for those who suffer disherison; judgment whether for them the writ lies.—*Pulteney* showed how the reversion was granted by fine to M.² against whom the writ is brought, for term of her life, with remainder to the plaintiffs, and thus [said he] we are disherited; judgment whether the writ does not lie.—*Thorpe*. You see plainly how by the fine which they have alleged in maintenance of their action it is supposed that we do not hold by lease, but that our estate is by grant of a reversion; judgment of this writ, which purports that we hold by lease.—*Pulteney*. Even though an estate commenced in you by way of a grant of a reversion, still when you have entered upon the land, after the death of the tenant for term of life, your entry is, according to law, by the person who granted the reversion to you, and that is in law accounted a lease, as, if

had a fee in the reversion, and the wife only a term for life. And the writ was adjudged good. This agrees with Michaelmas Term in the fourth year above, and Trinity Term in the eighth year, writ of Entry in *con-simili casu*, &c.¹

¹ The second reference appears to be to Y.B., Trin., 8 Edw. III., No. 31, fo. 48.

² 13 Edw. I. (Westm. 2), c. 14, and 20 Edw. I. (*Stat. de Fasto*).

³ For the precise terms of the settlement see page 113, note 6.

No. 22.

qi le bref, &c., a terme de sa vie, le remeindre a Richard et sa femme, et les heirs Richard.²—*Thorpe*. Jugement du bref qest porte pur la femme a desheritaunce wast ne poet estre fait, et *per consequens* le bref pur luy ne gist pas: qar si ele fut sole, ele navera pas le bref, *nec per consequens* a ore.—*Pult.* Cest a laccion.—*SHAR.* Quant a cel point agarda le bref bon.—*Thorpe*. Sire,³ vous veiez bien coment ils se font⁴ estraunges purchaceours par voie de remeindre, et par lestatut le bref nest pas done forsque pur ceux qe sont enherites; jugement si pur eux le bref igise.⁵—*Pult.* moustra par fyn coment la reversion fut graunte a M. vers qi le bref est porte pur terme de sa vie,⁶ le remeindre a les pleyntifs,⁷ et issint sumes enherites; jugement si le brief ne gise.—*Thorpe*. Vous veiez bien coment par la fyn quel ils ount allegge en meynテナunce de lour accion est suppose qe nous tenoms pas par lees, mes que nostre estat serreit par graunt de reversion; jugement de ceo bref, qe voet qe nous tenoms du lees.—*Pult.* Tut comencea estat en vous par voie de graunt de reversion, unqore quant vous estes entre⁸ en la terre, apres la mort le tenant a terme de vie, vostre entre est par ley par celui qe vous graunta la reversion, et cest acounte⁹ en ley un lees,

A.D.
1342-3.
avoit fee
en la re-
version, et
la femme
qe terme
de vie.
Et le bref
agarde
bon.
Concordat
supra
Michaelis
quarto, et
Trinitatis
octavo,
bref dentre
in
consimili
casu, &c.¹
[Fitz.,
Briefe,
664.]

¹ The marginal note subsequent to the word Wast is from 25,184 alone.

² According to the record the tenements were those "quæ Ricardus de Sancto Claro, persona ecclesiæ de Chiltone, et Willelmus de Sancto Claro præfatus Matilldi et Ricardo de Wygebeare quondam viro suo ad vitam ipsorum Ricardi de Wygebeare et Matilldis dimiserunt, ita quod, post mortem eorundem Ricardi de Wygebeare

"et Matilldis, præfatis Ricardo de Cogan et Mariæ et heredibus ipsius Ricardi de Cogan remanerent."

³ Sire is from Harl. alone.

⁴ L., sount, instead of se font.

⁵ L. and 22,552, gise.

⁶ The words pur terme de sa vie are from L. alone.

⁷ 22,552, parties.

⁸ L., entrates, instead of estes entre.

⁹ L., counte; Harl., acompte.

No. 22.

A.D.
1842-3.

I lease to a man for term of his life, with remainder over to another for his life, then if I avail myself of an action of writ of Waste against the second tenant, after the death of the first, I shall suppose that he holds by my lease; so also in this behalf.—SHARSHULLE adjudged the writ good.—*Thorpe*. You see plainly how he supposes that he has nothing except by way of remainder after our death, and the Statute gives an action of Waste for those who are in the reversion; and, besides, the wife who brings the writ has only a term for life; judgment whether the writ lies.—*Pulteney*. That plea is to the action.—They were adjourned.—See the writ adjudged good below, &c.

No. 22.

come si jeo lesse¹ a un homme a terme de sa vie, le remeindre outre a un autre pur sa vie, si jeo use² accion par bref³ de Wast vers le secounde tenaunt apres de deces le primer, jeo supposeray qil tient de mon lees; auxi de ceste part.—SCHAR. agarda le bref bon.—*Thorpe*. Vous veiez bien coment il suppose qil nad rien si noun par voie de remeindre apres nostre deces, et statut doune accion de Wast pur ces qe sont⁴ en la reversion; et, ovesqe ceo, la femme nad qe terme de vie qe porte le bref; jugement si le bref gise.⁵—*Pult*. Cest al accion.—*Adjournantur*.—*Vide breve consideratum bonum infra, &c.*⁶

A.D.
1342-3.

¹ The words come si jeo lesse are omitted from 22,552.

² Harl., usse; 25,184, eusse.

³ The words par bref are omitted from L.

⁴ L., celuy, instead of ces qe sont.

⁵ 25,184, igyse.

⁶ The last sentence is from L. and Harl., and is omitted from the other MSS.

According to the roll the pleadings which were followed by an adjournment were the following:—
"Johannes et Matilldis . . .
"dicunt quod breve istud de vasto
"fundatur super statuto, &c., per
"quod statutum non datur alicui
"treve de vasto nisi illo ad cujus
"exheredationem vastum factum
"fuerit, &c.; et per istud breve
"quod prædicti Ricardus et
"Maria nunc tulerunt conjunctim
"supponunt vastum fieri in præ-
"dictis tenementis ad exhereda-
"tionem prædicti Ricardi tantum,
"et non exheredationem prædictæ
"Mariæ, unde petunt judicium de
"isto brevi quod non warantizatur
"per statutum &c.

"Et Ricardus et Maria dicunt
"quod alias levavit
"quidam finis inter Ricardum de
"Wygebeare et Matilldem uxorem
"ejus, querentes, et Ricardum de
"Sancto Claro, personam ecclesie
"de Chiltone, et Willamum de
"Sancto Claro, deforciantes, de
"prædictis manerio et tenementis,
"simul cum aliis tenementis, cum
"pertinentiis, per quem finem iidem
"Ricardus de Sancto Claro et
"Willelmus concesserunt prædicta
"messuagia, terram, pratum, et
"redditum prædictis Ricardo de
"Wygebeare et Matilldi, tenenda
"ad totam vitam eorundem Ricardi
"et Matilldis, et etiam quod præ-
"dictum manerium cum pertinen-
"tiis, quod Johanna quæ fuit uxor
"Willelmi de Wygebeare tunc
"tenuit ad terminum vite, de
"hereditate prædicti Willelmi, &c.,
"et quod, &c., post mortem ejusdem
"Johannæ remaneret eisdem Ri-
"cardo de Wygebeare et Matilldi,
"tenendum ad totam vitam eorun-
"dem Ricardi et Matilldis, ita
"quod, post decessum ipsorum
"Ricardi de Wygebeare et Matilldis,

No. 23.

A.D.
1342-3.
Account.
And note
that in
law an at-
torney
does not
lie in this
case,
either by
writ or
without
writ, as
appears in
Hilary
Term in
the fourth
year, Writ
of Tres-
pass.¹

(23.) § Clemence de Vesci brought a writ of Account against John de Bekingham. Process was continued until he came on the Exigent, and pleaded, and found mainprise, &c. During process against the Inquest, the King sent his writ, reciting the process, to the effect that he had admitted John's attorneys, and commanded the Justices to admit them, notwithstanding the mainprise.—*Thorpe*. This writ is granted to the King's damage, because he will have a fine from the defendant and his mainperners if the defendant do not appear, and the writ has also issued contrary to law; and we pray, on the King's behalf, that it be not allowed by stealth.—The Statute² purports that upon writs on which the process is by Attachment and by Distress the party may make his attorney.—*SHARSHULLE*. So he can if the process be not changed by his own act; and so can a man make an attorney in a plea of land; but if he wage his law as to non-summons, an attorney does not lie on the day on which he has to perform his law;

¹ The reference is apparently to
Y.B., Hil., 4 Edw. III., No. 1, fo. 1.

² 6 Edw. I. (Glouc.), c. 8.

No. 23.

(23.)¹ § Clemence de Vesci porta bref dacompte vers Johan de Bekingham. Proces continue tant qil vient al exigende, et pleda, et trova meinprise, &c. Pendant proces vers lenqueste, le Roi maunda soun bref, reherceaunt le proces,² qil avoit resceu les attournes Johan, et comaunda as Justices qil les resceussent,⁴ nient aresteaunt⁵ la meinprise.—*Thorpe*. Ceo bref est graunte en damage du Roi, pur ceo qil avera fyn⁶ de luy et ses meinpernours sil ne veigne, et auxi le bref est issu countre ley; et prioms pur le Roi qil ne soit pas allowe en muscetes.—*Blaik*. Lestatut voet⁷ gen en tieux brefs qe sount menes par attachement et par destresse qe partie puisse faire son attourne.—*SCHAR*. Auxi poet il si le proces ne soit pas chaunge pur son fait demene; et si poet homme en plee de terre faire attourne; mes, sil gage la ley de noun somons, al jour qil ad de faire sa ley attourne ne gist pas;

A.D.
1342-3.
Acompte.
Et nota
attourne
de ley ne
gist mye
en ceo cas,
ne par
bref ne
sans bref,
ut patet
Hilarii
xiii^o, Bref
de Tres-
pas.²
[Fitz.,
Attourne,
65.]

"prædicta manerium et tenementa
"cum pertinentiis remanerent præ-
"fatīs Ricardo de Cogan, et Mariæ
"uxori ejus, et heredibus ipsius
"Ricardi in perpetuum. Et pro-
"ferunt hic partem prædicti finis,
"qui hoc testatur, &c. Et dicunt
"quod prædictus Johannes Mare-
"schal et Matildis, post mortem
"prædicti Ricardi de Wygebeare
"et Johanne, tenent manerium et
"tenementa prædicta ad terminum
"vitæ ejusdem Matildis, reversione
"inde ad ipsos Ricardum de Cogan
"et Mariam, et heredibus ipsius
"Ricardi spectante, virtute finis
"prædicti, &c. Et ex quo prædicti
"Johannes et Matildis non de-
"dicunt vastum fieri in prædictis
"tenementis, &c., petunt judicium,
"et dampna," &c.

Upon this the parties were ad-
journed; and, when they appeared

again, the defendants pleaded to
issue "quod ipsi non fecerunt ali-
"quod vastum . . . in prædictis
"tenementis ad exheredationem
"prædicti Ricardi, sicut iidem
"Ricardus et Maria versus eos
"narraverunt." The inference is,
of course, that the writ was held
good.

¹ From L., Harl., 22,552, and
25,184. This appears to be in con-
tinuation of the case No. 11 in
Trin. 16 Edw. III.

² The words of the marginal note
subsequent to Acompte are from
25,184 alone.

³ The words le proces are omitted
from L.

⁴ L., qils sourseent, instead of
qil les resceussent.

⁵ L., resteaunt.

⁶ 25,184, fin leve.

⁷ L., voet.

Nos. 24, 25.

A.D. 1342-3. nor does one in this case contrary to his own covenant.—Afterwards the defendant appeared of his own accord, and took a day.

Process in a case of *Capias utlagatum* where the record had been reversed. (24.) § Note that a *Capias utlagatum* issued returnable. The Sheriff returned that he sent the body and that he had seized the outlaw's goods to the value of 20s.—*Gaynesford*. We pray that the body, be delivered, for we tell you that the record, since the *Capias* issued, has been sued into the King's Bench, and there reversed on the ground of imprisonment, so that you have no warrant to imprison him.—HILLARY. We are not apprised of that which you say.—*Gaynesford*. You have not the record in this Court; consequently you cannot do anything.—STONEORE. This writ issued by good warrant, and we know well that he was outlawed; and either sue that his body be sent into the King's Bench, or cause us to have the tenour of the record of the Court in which this outlawry is reversed; and you shall have no other conclusion from us.

Dower where the (25.) § Gilbert de Umframville, son and heir of

Nos. 24, 25.

nec hic countre son covenant demene.¹—Puis le A.D. 1342-3.
defendant² *gratis* apparust, et prist jour.

(24.)³ § *Nota qe Capias utlagatum* issit retournable. Proces en cas de *Capias*
Le Vicounte retourna qil⁵ maunda⁶ son corps, et *utlagatum*
qil ad seisi de ses biens⁷ a la value⁸ de xx s.⁹— par la ou
Gayn.¹⁰ Nous prioms qe le corps soit delivers¹¹, le record
qar nous vous dioms qe le recorde, puis ceo qe le est re-
*Capias*¹² issit, est suy en Baunk le Roi, et illoeqes [Fitz.,
est reverse.⁴ *Utlagerie*,
46.]
est reverse par cause denprisonement, issint qe vous
naves pas garraunt de luy enprisonner.—HILL. Nous
ne sumes pas apris de ceo qe vous parles.—*Gayn*.
Vous navez pas le recorde ceinz; *per consequens*
vous ne poies rien faire.—STON. Ceo bref issit par
boun garraunt, et nous savoms bien qil¹³ fut utlage;
et sues qe son corps soit maunde en Baunk le Roi,
ou faites nous aver tenour del recorde ou cel
utlagerie est reverse; et autre fyn naverez de nous.

(25.)¹⁴ § Gilbert Umframville, fitz¹⁵ et heir Robert Dowers
ou le

¹ demene is from 22,552 alone.

² 25,184, sa defaute faite, instead of le defendant.

³ From L., Harl., and 25,184.

⁴ The words of the marginal note subsequent to Proces are from 25,184 alone.

⁵ The words retourna qil are from Harl. alone.

⁶ Harl., maundreit.

⁷ L., chateaux, instead of ses biens.

⁸ L., vaillaunce.

⁹ Harl., *ad valentiam ix solidorum*, instead of a la value de xx s.

¹⁰ L., Grene.

¹¹ L., delivere; 25,184, deliverrez.

¹² Harl., Cape.

¹³ L., coment il.

¹⁴ From L., Harl., 22,552, and 25,184, but corrected by the record

Placita de Banco, Hil., 17 Edw. III., R^o 318. It there appears that an action not of Dower but of Formedon in the Descender was brought by John son of Henry [de Ryhille] against Eleanor late wife of Robert de Umframville in respect of tenements in Netherton (Northumberland) which William son of William Heroun gave to Michael son of Thomas de Ryhille in frank marriage with his daughter Cecilia. The descent was from them to Isabel as daughter and heir, from her to Henry as son and heir, and from him to the demandant as son and heir. The tenant, Eleanor, vouched Gilbert son and heir of Robert de Umframville, Earl of Angus.

¹⁵ Harl., and 25,184, frere.

No. 25.

A.D. 1342-3. Robert de Umframville, Earl of Angus, was, on a writ of Dower,¹ vouched to warrant by a woman.—*Thorpe*. What have you to bind him?—*Moubray*. We tell you that in the Chancery the same tenements, by the description of a moiety of one knight's fee, were assigned to us, and delivered by the Escheator to hold in the name of dower of the endowment of Robert our husband, your father, whose heir you are, so that we vouch you as heir of our husband, &c.—*Thorpe*. We tell you that one A.² held the same tenements of Robert, our father, by knight service. From A. the right descended to Isabel as to daughter, and from Isabel to W.³ as son, by reason of whose non-age Robert our ancestor seized the wardship of the lands and of the heir, &c., so that Robert, our ancestor, had nothing in the tenements except in the name of wardship; judgment whether by your occupation, although you have taken upon yourself tenancy in dower, you can bind us to warranty in respect of such a tenancy, which cannot be understood to be in dower.

tenant
vouched,
as tenant
in dower
assigned
to her in
the
Chancery,
the heir of
her own
husband to
warrant,
and he, in
order to
escape
from the
warranty,
showed
that his
ancestor
had not in
the par-
ticular
tenements
such an
estate that
the wife
was dowe-
able, and
on this
issue was
taken.

¹ For the nature of the action see p. 117, note 14.

² For the real names see p. 121, note 1.

No. 25.

Umframville, Counte Dangos,² en un bref de Dowere A.D. 1342-3.
 fut vouche a garrantir par une femme.—*Thorpe.* tenant
 Quei aves vous de luy³ lier?—*Moubray.* Nous vous voucha a
 dioms qen la Chauncellerie mesmes les tenementz, garrantir,
 pas noun de le moite dun fee de chivaler, nous come
 furent assignez, et liverez par leschetour a tener en tenant en
 noun de dowere del dowement R. nostre baroun,⁴ luy en
 vostre pere,⁵ qi heir vous estes, issint come heir Chauncel-
 nostre baroun⁴ nous vouchoms, &c.⁶—*Thorpe.* Nous son baron
 vous dioms qun A. tient mesmes les tenements de demene,
 R., nostre pere, par les services de⁷ chivaler. De et il, pour
 A. descendit a Isabele come a fille, de Isabele a W. estourtre
 come a fitz, par qi nounage R. nostre aüncestre de la
 seisi la garde des terres et de heir, &c., issint que garrantie,
 R., nostre aüncestre, navoit rien en les tenements moustra
 forsque en noun de garde; jugement si par vostre qe son
 occupacioun, coment qe vous avez⁸ empris tenaunce aüncestre
 en dowere, nous püissez de tiel tenaunce, qe ne estat qe
 poet estre entendu⁹ en dowere, en la garrantie fust dow-
 able, et
 sur ceo
 issu fuit
 pris.¹

¹ The word Dowere is from Harl., and 25,184, the rest of the marginal note from 25,184 alone.

² 25,184, Danguis; the words Counte Dangos are omitted from L.

³ L., nous.

⁴ L., primer baroun.

⁵ The words vostre pere are omitted from L.

⁶ Moubray's pleading is thus represented on the roll: "Alianora "dicit quod prædictus Robertus de "Umframville, pater prædicti Gilberti, cujus heres ipse est, tenuit "diversa terras et tenementa de "domino Edwardo nuper Rege "Anglie, patre domini Regis nunc, "in capite, ita quod post mortem "ipsius Roberti tenementa nunc "petita, simul cum aliis tenementis, seisis fuerunt in manum "domini Edwardi Regis patris,

"&c., ita quod eadem Alianora "secuta fuit in Cancellaria ipsius "domini Edwardi Regis patris pro "dote sua habenda de tenementis "de quibus prædictus Robertus, "vir suus, obiit seisitus, &c., ita "quod villa de Nedirtone, unde "tenementa nunc petita sunt par "cella, per Escaetorem domini Regis "in Comitatu prædicto assignata "fuerunt (sic) eidem Alianoræ pro "medietate unius feodi militis "tenenda nomine dotis, &c., et "reversio inde post mortem ipsius "Alianoræ spectat ad ipsum Gilbertum, et petit quod ei warrantizet," &c.

⁷ All the MSS. except L., dun fee de.

⁸ 22,552, eiez.

⁹ entendu is from L. alone

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A.D.
1342-3.

—*Moubray*. Since you do not deny that our tenancy is by assignment, as above, and the law does not put me to answer by pleading as to my husband's estate, since I am endowed, judgment whether you ought not to warrant.—*Thorpe*. Then is it so?—*Notton*. Suppose the heir of your tenant had, when of full age, released to the woman, would not she be tenant in dower, with reversion to you?—*PARNING*. She would not be, for she would have a fee, and we must see in which way the woman will deraign warranty, whether on the ground that the reversion is to Gilbert, or on the ground that he has the two parts, because the recovery to the value will be different in the two cases.—*SHARSHULLE*. It seems difficult to understand, when you answer as tenant of the demesne, how you can vouch as tenant of a knight's fee which relates entirely to service, and not to demesne, because it is not capable of being handled; and by assignment of a knight's fee out of the Chancery a woman cannot have any thing but service.—

No. 25.

lier.¹—*Moubray*.² Del houre qe vous ne dedites³ pas nostre⁴ tenaunce estre par assignement, *ut supra*, et a pleder lestat moun baroun, ley ne moy mette pas a respondre,⁵ del houre qe jeo su dowe, jugement si vous ne devez garrantir.—*Thorpe*. Donques est il issint, &c.?—*Nottone*. Jeo pose qe leir vostre tenant a soun plein age ust relesse a la femme, ne serreit ele pas [tenaunte en dowere, et la reversion a vous? —*PARN*. Noun serreit, qar ele avereit fee, et il fait a veer coment⁶ la femme voet desrener]⁷ garrantie, ou pur ceo qe la reversion est a Gilbert, ou pur ceo qil ad les deux⁸ parties, qar les⁹ recoverers¹⁰ a la value serront¹¹ divers.—*SCHAR*. Il semble merveille,¹² quant vous responez come tenaunt del demene, coment vous poiez¹³ vouchen come tenant de fee de chivaler [qe chiet tout en service, et noun pas en demene, qar ceo nest pas maniable; et par assignement de fee de chivaler]¹⁴ hors de la Chauncellerie ne poet¹⁵ femme avoir forsqe service.—

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1342-3.

¹ The counterplea of warranty was, according to the roll, as follows:—"Gilbertus dicit quod "quidam Michael de Ryhille et "Cecilia uxor ejus tenuerunt tene- "menta nunc petita de prædicto "Roberto de Umframville, patre "ipsius Gilberti per servitium "militare, &c. Et de ipsis Michaele "et Cecilia descendit jus cuidam "Isabellæ ut filie et heredi, et de "ipsa Isabella descendit jus cuidam "Henrico ut filio et heredi, qui "quidem Henricus fuit infra "ætatem et in custodia ipsius "Roberti tempore mortis ipsius "Roberti eo quod idem Henricus "tenuit tenementa illa de ipso "Roberto per servitium militare, et "sic dicit quod prædictus Robertus "tempore mortis sue nihil habuit "in tenementis nunc petitis nisi

"ratione custodiæ ipsius Henrici.
"Et hoc paratus est verificare,
"unde petit judicium," &c.

² L., *Moubray*.

³ 25,184, dites.

⁴ 25,184, qe nostre.

⁵ The words a respondre are omitted from Harl.

⁶ 22,552, devant.

⁷ The words between brackets are omitted from L.

⁸ deux is omitted from L.

⁹ L. and 22,552, le.

¹⁰ L., recoveres; 22,552, recovere rienz.

¹¹ L., serra.

¹² L., merveille.

¹³ L., puissez.

¹⁴ The words between brackets are not in 22,552.

¹⁵ L., purra.

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A.D. 1342-3. STONORE. In former times feoffment of a manor was made by the description of a knight's fee, and so it can be at the present day, &c.—HILLARY. Yes, that is possible by feoffment which requires livery, but not by assignment of dower.—*Moubray*. We tell you that Robert, our husband, was seised of these same tenements, and died seised in his demesne, as of fee; ready, &c.—And the other side said the contrary.

Process in
Præcipe
quod
reddat. (26.) § Robert de Ferrers brought a *Præcipe quod reddat* against Maud late wife of R. de Holande, and she appeared, and vouched Henry brother and heir of Thomas Earl of Lancaster, who has to be summoned in a county other than that in which the writ was brought. The summons upon Henry having been witnessed, he made default, wherefore *Cape ad valentiam* was awarded, and a writ of Extent to the Sheriff of the County in which the demand was made. *Alias Cape* and *Pluries Cape* were entered on the roll, and no Extent was returned. Now *Gaynesford* prayed a *Sequatur suo periculo*.—*Pole*. That cannot be, because the Extent is not executed nor returned; therefore a *Sequatur suo periculo* could not in any way issue, so that this process made by roll is contrary to law.—*Gaynesford*. The suing of the Extent is given to the

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STON.¹ En auncien temps homme fist feffement² A.D. 1342-3.
 dun maner par noun de fee de chivaler, et huy³
 ceo jour poet, &c.—HILL. Oyl,⁴ poet estre par feffement [Fitz.,
 qe demande livere, mes noun pas par assignement⁵ *Feffements*
 de dower.—*Moubray*.⁶ Nous vous dioms qe R. *et Faits*,
 nostre baroun fut seisi de mesmes ceux tenementz, 59.]
 et morust seisi en son demene, come de fee; prest,
 &c.—*Et alii e contra*.⁷

(26.)⁸ § Robert de Ferrers porta *Præcipe quod* Proces en
reddat vers Maude qe fut¹⁰ la femme R. de Holande¹¹ *Præcipe*
 qe vint et voucha Henre frere et heire Thomas *quod*
 Counte de Lancastre, qe serra somons en autre *reddat*.⁹
 counte¹² qe le bref nest porte. La somons tes- [Fitz.,
 moigne¹³ sur Henre, il fist defaut, par quei *Sequatur*
Capē ad *sub suo*
valentiam fut agarde, et bref destente¹⁴ a Vicounte *periculo*,
 ou la demande fut. *Capē sicut alias et sicut pluris*
 entre en roulle, et nulle¹⁵ estente¹⁶ retourne. Ore
Gayn. pria *Sequatur suo periculo*.—*Pole*. Ceo ne poet
 estre, car lestente¹⁸ nest pas fait ne retourne; par
 quei *Sequatur suo periculo*¹⁷ ne purreit en nulle
 manere issir, issint qe ceo proces fait par roulle est
 countre ley.—*Gayn*. La suite¹⁸ del estente est done al

¹ 22,552, *Setone*.² 25,184, *defaute*.³ L., hu.⁴ L., Oiel.⁵ 22,552, *feffement*.⁶ L., *Moubray*.

⁷ After the counterplea the record continues as follows:—"Et Alia-
 " nora dicit quod prædictus Rober-
 " tus, pater prædicti Gilberti, cujus
 " heres ipse est, tempore mortis
 " ipsius Roberti, fuit seisisus de
 " tenementis nunc versus ipsam
 " petitus in dominio suo ut de
 " feodo et jure," &c. Issue was
 joined upon this.

⁸ From L., Harl., 22,552, and 25,184.⁹ The marginal note is from 25,184. In L. it is Voucher, in Harl., *Præcipe quod reddat*, and in 22,552, *Proces*.¹⁰ The words qe fut are from L. alone.¹¹ L., Holond.¹² 25,184, *countes*.¹³ L., *testimoigne*.¹⁴ L., *destendre*.¹⁵ L., nul.¹⁶ L., *extant*.¹⁷ All the MSS. but L., *Capē* instead of *Sequatur suo periculo*.¹⁸ L., *seute*.

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1342-3.

tenant so that, according to the extent, he may be able to recover to the value, and if he have not sued it that is his default, and otherwise the process would be infinite.—*Pole*. The Sheriff cannot take to the value before the extent is made and returned; and, therefore, before the extent is made, process cannot be made on the vouchee's default, and the parties have not a day on the Extent.—*HILLARY*. Process between the parties must always be continued on the roll, even though the extent be not made; and therefore, although a writ of *Cape ad valentiam* ought not to issue before the extent is made, an *Alias Cape* and a *Pluries Cape* ought to be entered, and *idem dies* to the demandant, or otherwise the whole would be discontinued.—And afterwards a *Sequatur suo periculo* was entered.

Process.
And note
that upon
the essoin
mention
was made
in the roll
that one
[of two
vouchees]
was dead.

(27.) § On a *Præcipe* the tenant vouched two persons. To the *Cape ad valentiam* the Sheriff returned that one was dead; and against the other, who appeared, the tenant was essoined, without making any mention of the one who was dead.—*Pole* prayed, after the fourth day, that the essoin might be amended, because otherwise the voucher would be discontinued against the one, in which case the tenant might, perhaps, lose his warranty in respect of a moiety, if no mention were made in the essoin of the death of the other.—*SHARSHULLE*. Yes; the two are vouched by reason of their own deed, as it seems, for they are not vouched as heirs; wherefore by the death of one the whole charge

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tenant issint qil purra solonc lestente recoverir a la value, et sil nel¹ eit pas suy cest sa defaute, et autrement le proces serreit² infinit.—*Pole*. Vicounte ne poet prendre a la value devant lestente fait et retourne³; par quei, devant qe lestente soit fait, proces sur la defaut le vouche ne poet estre fait, et parties sour lestente nount pas jour.—*HILL*. Il covient touz jours en rouble continuer proces entre parties, tout ne soit pas lestente faite; par quei tout ne deit pas bref issir de *Cape ad valentiam* devant lestente faite, *sicut alias Cape et sicut pluries* deit⁴ estre entre, *et idem dies* al demandant, ou autrement tout serreit² discontinue.—Et puis *Sequatur suo periculo* fut entre.

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(27.)⁵ § A un *Præcipe*⁷ le tenaunt voucha deux. *Proces*. Al *Cape ad valentiam* le Vicounte retourna qe lun fut mort; et vers lautre, qe vint, le tenaunt fut mention fuit fait en essone, sans faire mention de celuy qest mort.—roule sur lessone qe *Pole* pria, apres le quart jour, qe lessone⁸ fut lun fut mort.⁹ amende, qar autrement le vouchier serreit discontinue [Fitz., *Amendement*, 54.] vers lun,⁹ ou par cas le tenant perdreit¹⁰ en dreit¹¹ de la moite sa garrantie, si en lessone mention ne fut¹² pas fait de la mort lautre.—*SCHAR*. Oil; les deux sount vouches par¹³ lour fait demene, a ceo qe semble, qar ils ne sount pas vouches come heirs; par quei¹⁴ par la mort lun tout le charge

¹ nel is from Harl. alone.

² L., serra.

³ The words et retourne are from L. alone.

⁴ L., covynt.

⁵ From L., Harl., 22,552, and 25,184.

⁶ The words of the marginal note subsequent to *Proces* are from 25,184 alone. The words en plee de terre are substituted for them in Harl.

⁷ L., En un plee, instead of A un *Præcipe*.

⁸ Harl., e rouble.

⁹ L., luy.

¹⁰ L. and Harl., pledra.

¹¹ The words en dreit are omitted from L. and 22,552.

¹² L., soit.

¹³ L., de.

¹⁴ L., issynt qe; 25,184, qar, instead of par quei.

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A.D. 1342-3. of the warranty descends upon the other alone; and it is well to save process. Therefore SHARSHULLE gave orders to the clerk that the essoin should be corrected.

Process. And note that all this suit by writ of Trespass was sued in order to abate the writ of Formedon, but it did not avail, because the woman came in custody of the Sheriff, &c.

(28.) § Alice de Metham and her sister heretofore brought a Formedon against Aymer Birdet. After they had pleaded to the country the tenant alleged that Alice had, since the last continuance, taken a husband, to wit, Richard de Wodehale; and upon that Alice and the tenant were at issue between them, on the abatement of the writ. While this issue was pending Alice took as her husband Walter Pyry, and against them Aymer brought a writ of Trespass,¹ and supposed Alice to be the wife of Walter Pyry. Process was continued to the *Capias*. Alice came in custody of the Sheriff, and a Protection was produced for Walter Pyry, wherefore the parol was put without day against Walter and Alice. And in the Formedon it had been proceeded so far that, after issue had been joined on the coverture, the parol demurred without day by Protection; and afterwards, a Resummons having been returned, through the tenant's default, the *Cape* issued returnable now.—*Pulteney* recited how heretofore on the writ of Trespass, by reason of a Protection produced for her husband, the parol demurred without day against him and his wife, who is this same Alice that is now demandant, and at that time she did not plead as sole, but accepted the coverture, and so she has become covert, pending her writ; judgment of the

¹ See Y.B. M. 16 Edw. III., No. 15.

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de¹ la garrantie descend² sur lautre soulement; et al clerke qe lessone fut corige.³ A.D. 1342-3.

(28.)⁴ § Alice de Metham⁵ et sa soer autrefoith porterent Fourme de doun vers Eymer⁷ Birdet.⁸ Apres ceo qils avoient plede al pais le tenaunt alleggea qe Alice, puis la derreine continuaunce, avoit pris baroun, saver, Richard de Wodehale; et sur ceo entre Alice et luy furent a issue [sur labatre⁹ de bref; pendant quel issue]¹⁰ Alice prist baroun Walter Pyry,¹¹ vers queux Eymer¹² porta bref de Trespas, et supposa Alice estre la femme Walter Pyry. Proces continue tanqe al *Capias*. Alice vint en garde de Vicounte, et Proteccion fut mys avant pur Walter Pyry, parquei la parole fut mys saunz jour vers Walter et Alice. Et en la Fourme de doun taunt fut processe qapres la mise joint¹³ sur la couverture, la parole demura saunz jour¹⁴ par Proteccion; et puis, Resomons¹⁵ retourne, par default del tenant, *Cape* issit retournable ore.—*Pult.* rehercea coment autrefoith al bref de Trespas, par Proteccion mys avant pur son baroun, la parole demura saunz jour¹⁴ vers luy et sa femme, qest mesme cestuy Alice qore est demandante, a quel temps ele ne pleda pas come soule, mes accepta la couverture, et issint sad ele coverte¹⁶ pendaunt son bref; jugement de bref.—

Proces.
Et nota
tut cest
suyte del
bref de
Trespas
fut suwy
pur abatre
le bref de
Formedon,
sed non
ele vynt
en garde
de
Vicounte,
&c.⁶

¹ The words tout le charge de are omitted from L.

² L., tout estent.

³ 25,184, trove.

⁴ From L., Harl., 22,552, and 25,184, until otherwise stated.

⁵ The marginal note, except the word Proces, is from 25,184. In Harl. it is *Forme de doun*.

⁶ L., Medham.

⁷ Harl., Aymer.

⁸ L., Birdit.

⁹ L., le bater.

¹⁰ The words between brackets are omitted from 22,552.

¹¹ L., Piri; Harl., Pery; 22,552, Pirry.

¹² L. and Harl., Aymer; 22,552, Wauter.

¹³ 25,184, yoint.

¹⁴ The words saunz jour are from L. alone.

¹⁵ L., al somons.

¹⁶ L., ad ele prise baroun, instead of sad ele coverte.

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writ.—**SHARSHULLE.** When the parol demurred by reason of a Protection produced for the person who was supposed to be her husband, she could not have pleaded anything.—*Grene.* Yes, she could, for, if she had been sole, she ought, notwithstanding the Protection, to have pleaded in abatement of the writ, because it is certain that, when a writ of Trespass is brought against several persons, a Protection for one will not put the parol without day against the others; wherefore, if she had been sole, without having regard to the Protection produced for another, if he had not, according to the truth of the matter, been her husband, she ought to have pleaded; but since she did not do so, but took advantage of the Protection as a wife, she shall never be admitted to say the reverse.—*Pole.* If she had appeared of her own accord, your reason why she should not be admitted would, perhaps, be cogent, &c.; but when a woman comes brought in custody by the Sheriff, who might possibly be as well any other person as this Alice, you cannot fasten any acceptance on this Alice. And it cannot be tried by inquest whether she be the same person that was called wife of Walter Pyry, or not.—*Pulteney.* That cannot be brought down to averment, but you shall not be admitted to say that she is sole, or any other than the wife of Walter, &c.—And in this case was touched the point that if there be several persons who bear one and the same name, and a writ of Trespass be brought against one of them, and he be found guilty, the plaintiff can elect which of them he will take, and have execution against

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SCHAR. Quant la parole demura par Proteccion mys avant pur celuy qe fut suppose¹ soun baroun, ele ne poiait² rien aver plede.—*Grene.* Si poiait,³ qar si ele ust este soule, ele duist, *non obstante* la Proteccion, aver plede al abatre du bref, qar certain est, quant bref de Trespas est porte vers plusours, qe Proteccion pur un ne mettra pas la parole sanz jour vers les autres; parquei si ele ust este soule, sanz aver regarde al Proteccion mys avant pur autre,⁴ sil⁴ nust este *de rei veritate* soun baroun,⁵ ele dust aver plede; mes quant ele ne fist pas, mes prist avantage come femme par la Proteccion, jammes ne serra ele resceu a dire le reverse.—*Pole.* Si ele ust⁶ venuz de gree,⁷ vostre resoun liereit par cas qele ne serra pas resceu, &c.; mes quant une femme vient mene⁸ par Vicounte, qe purreit estre par cas auxi bien autre persone⁹ come ceste Alice, vous ne poiez lier nul accepter sur ceste Alice. Et homme ne poet enquerre¹⁰ si ele soit mesme la persone qe fut nome¹¹ femme Walter Pyry ou noun.—*Pult.* Ceo ne chiet pas en averement, mes vous ne serrez pas resceu a dire qele est soule, ou autre qe¹² la femme Walter, &c.—Et en ceo ple fut touche qe sil¹³ isoient¹⁴ plusours qe portent un mesme noun, et bref de Trespas soit porte vers un deux, et il soit atteint qe le pleintif poet eslire quel¹⁵ deux il voet¹⁶ prendre, et vers

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1842-3.[Fitz.,
Averement
28.]¹ suppose is omitted from L.² L. and Harl., put.³ L., lantre; the word is omitted from 25,184.⁴ 25,184, si ele.⁵ 25,184, coverte, instead of soun baroun.⁶ 25,184, fuit.⁷ The words de gree are omitted from L.⁸ Harl., mesne.⁹ L., persoun.¹⁰ L. and Harl., enquerre.¹¹ All the MSS. except L., mene come.¹² L., autrement, instead of autre qe.¹³ 22,552, sils.¹⁴ 22,552 and 25,184, ysoient.¹⁵ Harl., and 22,552, qi.¹⁶ L., voille; Harl., voudra.

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him.—SHARSHULLE. It is not so, because, in the case which you put, each of them would have the averment that he is not the same person. And, in a plea of land, in such a case, each of them will have Assise, if he be ousted by execution from his land, when he is not the same person.—*Thorpe*. Certainly not; each of them would then have averment, and would so avoid the judgment.—SHARSHULLE. That is true, and that would make your writ bad.—And afterwards *Pulteney* said that he would waive his plea in law, if she wished, and would aver that Walter was her husband.—*Pole*. We pray that the jury be respited according to our first issue.—Afterwards *Thorpe* showed how by reason of two Protections at different times the parol had demurred, and Resummonses had been twice sued which are not in accordance with the record, wherefore the Court, on this process, cannot do anything.—And note that the first Resummons is not in accordance and is bad, but the second Resummons now is quite in accordance.—And notwithstanding that the second Resummons is in accordance, because the other was previously not in accordance, and without warrant, it was adjudged that both Resummonses should be discontinued.—But note that although process be discontinued on a Resummons, one shall nevertheless have another Resummons on the Original.—See above as to this matter.

Formedon. § Alice de Metham and Katharine her sister brought

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luy aver execucion.—SCHAR. *Non est ita*, qar il avereit averement en vostre cas, chesqun deux, qil nest pas mesme la persone. Et [en plee de terre, en tiel cas, il avera]¹ Assise sil soit ouste dexecucion² hors de sa terre, la ou il nest pas mesme la persone.—*Thorpe*. Nanil certes; donques avereit chescun deux averement,³ et issint voidereint⁴ le jugement.—SCHAR. Cest verite, et ceo ferreit vostre malveis⁵ bref.—Et puis *Pult.* dit qil voleit weyver son plee en ley si ele voleit, et averer qe Walter fut soun baroun.—*Pole*. Nous prioms qe la jure soit mys en respit solonc⁶ nostre primer issu.—Puis *Thorpe* moustra coment par deux Proteccions⁷ a divers foith la parole ad demure, et deux foith⁸ Resomons suy,⁹ qe sont desacordantz al recorde, par quei Court sur cel proces ne poet rien faire.—Et *nota*¹⁰ qe la primere Resomons est desacordaunt et [malveis, mes la seconde Resomons a ore est bien acordaunt.—Et *non obstante* qe la seconde Resomons est acordaunt, pur ceo qe lautre adevant fut desacordaunt, et]¹¹ desgarranti, fut agarde qe lun et lautre Resomons fuissent discontinues.¹²—*Sed nota* qe tout soit proces discontinue sur Resomons, *non obstante*, homme avera sur lorignal autre Resomons.¹³—*Vide supra de ista materia*.¹⁴

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1342-3.

§ Alice¹⁵ de M. et Katherine sa soer porterent Forme-
duon.

¹ The words between brackets are not in 22,552.

² Harl., par execucion.

³ averement is omitted from L.

⁴ L., voider; Harl., voidrout; 22,552, voiderent.

⁵ L., malveus.

⁶ L., solom.

⁷ 22,552, petitions.

⁸ foith is omitted from L.

⁹ suy is omitted from L.

¹⁰ Harl., *non obstante*.

¹¹ The words between brackets are omitted from L.

¹² L., fut discontinue.

¹³ 25,184, proces, instead of autre Resomons.

¹⁴ The last sentence occurs only in L. and Harl.

¹⁵ This report of the case appears as No. 54 of the old editions, but it is clearly only No. 28 in another form. The MS. from which it was printed is not known to be in existence, but some obvious misprints have been corrected, and some variations in the earlier editions have been indicated.

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a Formedon against Aymer Birdet. Process was continued until Aymer traversed the gift, and thereupon process was made against the inquest until it came ready to pass; and on that day Aymer said that Alice had taken as her husband, since the last continuance, one R. de Wodehale, and demanded judgment of the writ, And she said that she was sole. And upon that they were at issue. Afterwards Aymer put the parol without day by a Protection. And afterwards Alice and Katharine sued a Resummons against Aymer, who made default; and therefore the Grand *Cape* issued returnable on a certain day, on which day Aymer put the parol without day by a Protection. And now a Resummons issued against Aymer, and Aymer appeared. And Alice and Katharine appeared by attorney and said that they would not hold to the default, but they prayed that the jury to which issue had been joined between Alice and Aymer, and which had been respited, might continue in force, and they prayed process against the jurors.—*R. Thorpe*. That process ought not to be made, because, since that issue was joined, we brought a writ of Trespass against Walter Pery, your husband, and against you, as against his wife; process was continued until you were at the *Capias*, to which writ the Sheriff returned, as to Walter, that he had nothing, and was not found, &c.; and as to you he returned that you were taken, and that he sent you into the Bench; and on that day a Protection was produced for Walter, your husband, and therefore the parol was put without day as against him, and as against you also, as appears in last Michaelmas Term; and inasmuch as you allowed the parol to be put without day, as against you, by that Protection, you accepted the position of wife of this same Walter, and thereby admitted in Court, of record, to have become covert baron since this issue in the Formedon, and so you have abated your writ; wherefore on that writ you cannot have a jury.—*Grene*. Sir, you cannot,

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un Formedoun vers Eymer Birdet.¹ Proces taunt continue qe Eymer traversa le doun, et sur ceo proces fuit fait vers lenquest tanqe il vient, prest de passer; a quel jour Eymer dit qe Alice avoit pris baron, puis le derrein continuance, un R.² de W., et demanda jugement du bref. Et ele dit qe ele fuit sole. Et sur ceo ils fuerent a issue. Apres Eymer mist la parole saunz jour par Proteccion. Et puis Alice et Katerine suerent un Resomons vers Eymer, qe fist default; par quei le Graunt *Cape* issist retournable a certain jour, a quel jour Eymer mist la parole saunz jour par Proteccion. Et ore le Resomons issist vers Eymer, et Eymer vient. Et Alice et Katerine viendrent par attourne, et disoient qe eles ne voillent pas prendre a la default, mes eles prierent qe la jure jointe entre Alice et Eymer, qe fuit mis en respit, soit en sa force, et prierent proces devers les jurours.—*R. Thorpe*. Ceo ne doit³ estre fait, car, puis cel issue joint, nous portames un bref de Trespas devers Walter Pery vostre baron, et devers vous, come devers sa femme; proces tant continue qe vous fustes al *Capias*, a quel bref, quant a Walter, le Vicounte retourna qil navoit rienz, et ne fuit pas trove, &c.; et quant a vous il retourna qe vous fustes pris, et vous maunda en Bank; a quel jour Proteccion fut mise avant pur Walter vostre baron, par quei la parole fuit mise saunz jour devers luy, et devers vous auxi, *ut patet Michaelis ultimo*; et en tant qe vous suffretz la parole estre mise saunz jour devers vous par cel Proteccion, vous acceptastes estre⁴ la femme mesme cesti Walter, et en tant conisastes en Court de recorde estre coverte de baron puis cesti issue en le Formedoun, et issint aves abate vostre bref; par quei sur cel bref ne poiez pas la jure aver.—*Grene*. Sire, vous ne poiez pas, par taunt

A.D.
1342-3.¹ Rastell, Burdett.² Old editions, I. or J.³ Edition of 1679, poit.⁴ Old editions, conu.

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because we allowed the parol to demur without day by reason of that Protection, affirm against us that we supposed ourselves to be covert of this Walter, because, even though we had said, on the day on which the Protection was produced, that we were not the wife of Walter, the Court would not have taken that plea from us at that time, but the Court would have said to us that we could plead it in sufficiently good time on the day on which Walter should come into Court; therefore, since we should not have had that plea on that day, it seems that you cannot adjudge anything on the ground that we affirm him to be our husband.—And to that reasoning all the Justices agreed.—But *W. Thorpe* dissented from it, because he said that on a writ of Trespass brought against several persons, although one of them might put the parol without day by Protection, yet the others would answer; it is otherwise when the writ is brought against a husband and his wife, because they are as one person in law; therefore, when the writ was brought against Walter and Alice his wife, and Walter put the parol without day by Protection, if Alice had then said that she was not his wife, she would have shown that, on that account, the parol ought not to be put without day as against her, because she was a stranger to Walter; therefore, when she did not do so, she affirmed that this Walter was her husband, and consequently her writ is abated.—*Richemunde, ad idem.* Even though the law be such that she would not have been admitted in the plea to say that she was not his wife on the day on which the Protection was produced, still she ought to have stated it to the Court on that day, and to have prayed that it might be entered on the roll, in order to save her from the peril in which she now is: as in case a writ of Debt be brought against a man and his wife, and on the Distress the husband does not appear, but the wife does appear, and she says nothing on that day, but the Distress issues anew against the husband,

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qe nous sufframes la parole demurer saunz jour par cele Proteccion, affermer sur nous qe nous supposames estre coverte de cest Walter, qar mesqe nous ussoms dit, a cel jour qe la Proteccion fuit mise avaunt, qe nous ne fuimes pas la femme Walter, la Court ne ust pas pris cel plee de nous a cel temps, mes la Court ust dit a nous qe nous puissoms pleder ceo assetz par temps al jour quant Walter venist en Court; donques, quant nous nussoms pas ew cel plee a cel jour, il semble qe vous ne poiez pas ajugger nule chose par quele nous luy affermoms estre nostre baron.—Et a cele resoun accorderent touz les Justices.—Mes *W. Thorpe* le denia, car il dist qe en bref de Trespas porte vers plusours, mesqe un mist la parole saunz jour par Proteccion, uncore les autres respondront; autrement est la ou le bref est porte vers le baron et sa femme, qar eux sont come une persone en ley; donques, quant le bref fuit porte vers Walter et Alice sa femme, et Walter mist la parole saunz jour par Proteccion, si Alice donques ust dit qe ele ne fuit pas sa femme, ele ust moustre qe par taunt la parole devers luy ne duist pas estre mise saunz jour, pur ceo qe ele fuit estraunge a Walter; donques, quant ele ne fist pas, ele afferma qe cesty Walter fuit son baron, et *per consequens* son bref abatu.—*Rich. ad idem.* Mesqe la ley soit tiele qe ele nust pas este resceu en le ple daver dit qe ele ne fuit pas sa femme al jour qe la Proteccion fuit mise avaunt, uncore ele le duist aver dit a cel jour a la Court, et prie qe ceo fuit entre en le rolle, pur luy saver de le peril en quel ele est a ore: come en cas si bref de Dette soit porte vers un homme et sa femme, et a la Destresse le baron ne vient pas, mes la femme vient, et ele ne dit rienz a cel jour, mes la Destresse issist vers le baron,

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and the wife takes a day by *Idem dies*, the wife shall never afterwards be admitted to say that she is not the wife of the defendant, because she took the day by the *Idem dies* as his wife; so here.—*Pole*. Sir, the record in the writ of Trespass does not prove that the person who was named in that writ was this same Alice that brought the Formedon, for in the writ of Formedon she is named Alice de Metham, and the writ of Trespass is brought against Alice wife of Walter Pery, who may be understood to be another person, and in case she should wish to say that she was not that same person who was named in the writ of Trespass, it cannot be tried, because one cannot know from what place he will cause the jury to come; wherefore that is no plea.—*W. Thorpe*. Also I say that she cannot have such an answer as to say that she was not the same person that was named in the writ of Trespass.—*SHARSHULLE*. What you say is wrong: for suppose there are two William Sharshulles, and one of them commits a trespass against you, for which reason you bring a writ of Trespass against him, and he is found guilty by inquest, and you sue execution in the lands of the other, who committed no trespass against you, the latter will have a good action against you. And if you allege the recovery, he can well say that he is not the same person against whom you recovered; why ought not Alice to do the like here? And we do not find any mention made in the roll that she appeared on the day on which the Protection was produced; wherefore it seems that you cannot surmise against her that, at that time, she admitted herself to be the wife of Walter.—*Pulteney*. Sir, whether she appeared on that day or not, you do not find any express mention made in the roll of that particular fact, but yet you can well know that she came into Court on that day, because you will find that the *Capias* was served against Alice, and that the Sheriff charged himself with her body; therefore, in case the Sheriff had

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et la femme prist¹ jour par *Idem dies*, jammes ne serra la femme resceu en apres a dire qe ele nest pas la femme le defendant, pur ceo qe ele prist le jour par le *Idem dies* come sa femme; issint icy.—*Pole*, Sire, le recorde en le bref de Trespas ne prove pas qe celui qe fuit nome en cel bref fuit mesme cesti Alice qe porta le Formedoun, car en le bref de Formedoun ele est nome Alice de Metham, et le bref de Trespas est porte vers Alice la femme Walter Pery, qe poit estre entendu autre persone, et, en cas qe ele voille dire qe ele ne fuit mesme la persone qe fuit nome en le bref de Trespas, ceo ne puit pas estre trie, car homme ne puit saver de quel lieu il fra vener le Pais; par quei ceo nest pas ple.—*W. Thorpe*. Auxint jeo die qe ele ne puit aver tiel respons a dire qele ne fuit pas mesme la persone qe fuit nome en le bref de Trespas.—*Schar*. Vous dites malement: qar jeo pose qils sont ij William Schareshulle, et lun vous fait un trespas, par quei vous portez bref de Trespas vers luy, et il est trove coupable pas enqueste, et vous suez execucion en les terres lautre, qe vous fist nul trespas, il avera bon accion vers vous. Et si vous alleggez le recoverir, il dirra bien qe il nest pas mesme la persone vers qi vous recoverastes; pur quei ne doit Alice issint icy? Et² nous ne trovoms nule mencion fait en le rolle qele venist al jour quant la Proteccion fuit mise avaunt; par quei il semble qe vous ne poiez surmettre a luy qe, a tiel temps, ele soy accepta estre la femme Walter.—*Pult*. Sire, le quel il venist a cel jour, ou noun, vous ne trovez expresse mencion fait de ceo en le rolle, mes uncore vous poiez bien saver qe ele venist en Court a cel jour, car vous trouverez le *Capias* servi devers Alice, et qe le Vicounte soy chargea de son corps; donques, en cas qe le Vicounte ne

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¹ prist is omitted from the edition
of 1679.

² Old editions, Et, Sire.

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not brought the body on that day on which the *Capias* was returned, he would have been amerced, notwithstanding that the husband had put the parol without day by Protection; and, since you do not find in the roll that the Sheriff was amerced, you can understand sufficiently well that he brought Alice's body on his day; wherefore it seems that you have sufficient matter to abate her writ of Formedon.—*Pole*. It is not proved by the record that this Alice is the same person that was named in the writ of Trespass.—*Grene*. We surmise it, and you do not deny it. And suppose Walter and Alice had been convicted as trespassers on that writ of Trespass, and we were now to plead that fact against you, would it be a good answer for you to say that it was not proved by the record that this Alice was the same person against whom the writ of Trespass was brought, without answering absolutely whether she was the same person or not? as meaning to say that it would not; wherefore neither is it here.—*Notton, ad idem*. Sir, you will find that the process is discontinued, for you will find that the first Resummons was sued by Katharine and by Alice against Aymer Birdet in respect of a moiety of the manor of H., whereas by the Original Writ the entire manor was demanded, so the Resummons is not warranted by the Original; and, inasmuch as the process has been ever since continued on that Resummons, it seems that all that process is discontinued; and thereon we demand judgment.—*W. Thorpe*. It was necessary that the Resummons should be sued in respect of a moiety: for, inasmuch as the issue whether Alice was covert or not was joined between Alice and Aymer alone, and Katharine was in no way a party to it, when the Resummons was sued for the re-continuance of the jury to try the issue joined between those two, it would be necessary that it should be in respect of the moiety and not of the entirety.—*Notton*. Although the issue was joined between Alice and Aymer alone, yet on

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ust pas amene le corps a cest jour de *Capias* retourne, il ust este amerçi, *non obstante* qe le baron ust mis la parole saunz jour par Proteccion; et quant vous ne trovez en le rolle qe le Vicounte fuit amerçi, assetz poiez entendre qe il amena le corps Alice a son jour; par quei il semble qe vous avez assetz de matere de abatre son bref de Formedoun.—*Pole*. Il nest prove par le recorde qe cesti Alice est mesme la persone qe fuit nome en le bref de Trespas.—*Grene*. Nous le surmettoms, et vous ne le dedites. Et jeo pose qe Walter et Alice ussent este atteints trespassours¹ en cel bref de Trespas, et nous le pledoms ore devers vous, serroit il bel respons a vous a dire qe par le recorde ne fuit pas prove qe cesti Alice ne fuit mesme la persone vers qi le bref de Trespas fuit porte, saunz respondre tout atrenche le quel ele fuit mesme la persone ou non? *quasi diceret non*; par quei *nec hic*.—*Nottone, ad idem*. Sire, vous trouverez le proces discontinue, car vous trouverez qe le primer Resomons fuit sue par Katherine et par Alice devers Eymer Birdet le la moite del maner de H., la ou par le bref original lentier maner fuit demande, issint le Resomons nient garranti del original; et, en taunt qe le proces est tout temps puis continue sur cel Resomons, il semble qe tout cel proces est discontinue; sur quei nous demandoms jugement.—*W. Thorpe*. Il covient qe le Resomons fuit suy de la moite: car en taunt qe lissue le quel Alice fuit coverte ou nemy fuit joint entre Alice et Eymer solement, a quei Katherine fuit rienz partie, donques quant le Resomons fuit sue de recontinuer la jure entre eux ij joint, il coviendrait qe ceo fuit de la moite et nemy de lenter.—*Nottone*. Mesqe lissue fuit joint entre Alice et Eymer solement, uncore sur

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¹ Edition of 1679, de trespas.

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1342-3.

that issue the whole manor is liable to be lost: for if the inquest passes for Aymer, the whole writ will abate, and if it passes against him the whole manor is lost; and even though it were the fact that the law were such (as I believe it is not) that by this issue only a moiety of the manor will be liable to be lost, then Alice would have a Resummons for herself in respect of a moiety of the manor, and Katharine another Resummons for herself in respect of the other moiety. Therefore, when this Resummons has issued for those two in respect of a moiety of the manor only, it seems that all the process which has issued on this Resummons is null in law, &c.—STONORE. It seems to us that this Resummons cannot be good, nor warranted by the preceding plea on the Original Writ; wherefore the *Cape* which issued on this Resummons, and also the second Resummons which issued returnable now are not warranted by the writ; and therefore all the process on the first Resummons is discontinued; and for that reason we have discontinued it; and sue you a new Resummons which can be warranted by the Original Writ, if you will.—And so observe that nothing was discontinued but the process which was bad, and the process which was well continued stood in force.—See like matter in Trinity Term in the fifth year on a Voucher, &c.

Detinue of (29.) § Henry le Warde and Margaret his wife
the wife's brought a writ, and demanded the reasonable part
reasonable of her

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cel issue tout le maner est mis en perde: car si lenqeste passe pur Eymmer tout le bref abatera, et sil passe encountre luy tout le maner est perdu; et mesqe issint fuit qe la ley fuit tiele, come jeo crey qe il nest pas, qe par cel issue forsqe la moite del maner serra mis en perde, donqes Alice averoit un Resomons a per luy de la moite del maner, et Katerine autre Resomons a per luy de lautre moite. Donqes, quant ceste Resomons est issue par eux ij de la moite del maner solement, il semble qe tout le proces qe est issue sur cel Resomons est nul en ley, &c.—Ston. Il semble a nous qe ceste Resomons ne puit pas estre bon, ne garranti del ple precedant sur le bref original; par quei le *Cape* qe issist sur cel Resomons, et auxi le ij Resomons qe issist retournable a ore ne sont par garrantis de bref; et par taunt tout le proces qest sur le primer Resomons est discontinue; et pur ceo nous le discontinuames; et suez vous novel Resomons qe puit estre garranti de bref original, si vous voillez.—*Et sic vide* qe rien fuit discontinue forsqe le proces qe fuit malveis, et le proces qe fuit bien continue estoit.—*Vide* tiel matere, *Trinitatis*, v. en un voucher, &c.

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1342-3.

(29.) ¹ § Henre Warde² et Margarete sa femme porterent bref, et demanderent la resonable³ partie

Detenue
de la
renable
partie la
femme de

¹ From L., Harl., 22,552, and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 17 Edw. III., R^o 288 d. It there appears that the action was brought by Henry le Warde and Margaret his wife against Roger de Wullesthorpe, executor of the will of William son of Roger de Wullesthorpe, Margaret's former husband. The ground of action was that the defendant "simul cum Thoma de Barnesby, coexecutor prædicti

"Rogeri testamenti prædicti, præ-
"fata Margaretæ rationabilem
"partem suam ad valentiam
"ducentarum librarum de bonis et
"catallis quas fuerunt prædicti
"Willelmi quondam viri sui de-
"tinent minus juste, et eam ei
"reddere contradicunt in ipsorum
"Henrici et Margaretæ damnum,"
&c.

² 22,552, Warthe.

³ L., revenable.

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1342-3.
husband's
chattels,
to wit a
moiety,
because
the hus-
band had
not issue.

of the goods of Margaret's first husband against the executors of her first husband; and they demanded £200, and counted how by the custom of the Realm a moiety of the goods which were her husband's on the day on which he died belonged to Margaret, and they showed how the husband had goods and chattels on such a day, and in such a place, when he died, to the amount of £400, whereof a moiety belongs to her portion, because he had no issue, &c.—*Thorpe*. This writ is brought against two executors, and notwithstanding that the Grand Distress is served, though it be the fact that one of them appears, one shall not answer without the other, because this is an action of Detinue of which the Statute¹ makes no mention, but only of an action of Debt.—*Grene*. This action is properly an action of Debt, because the goods could not be hers during the life of her husband, nor can they be hers after his death until she has recovered them.—HILLARY. The process is quite the same in Debt and in Detinue; and in a plea of Detinue the essoin and the warrant of attorney shall be in the words "*de placito Debiti*."—*Thorpe*. That is only a form; but the actions are different; and *Privilegia Statuti sunt stricti juris*; and in Detinue of a writing against executors one shall not answer without the other.—HILLARY. We have spoken among ourselves, and it seems to us that process in Detinue as well as in Debt is included in the Statute; and therefore answer.—And afterwards the writ abated for False Latin.

¹ 9 Edw. III., c. 3.

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des biens son primer baroun vers les executours le primer baron Margarete; et demanderent celi., et counterent² coment par la custume du Roialme la moite des biens qe furent al baroun Margarete jour qil morust affiert a luy, et moustrerent coment le baroun avoit biens et chateux³ a tiel jour et tiel lieu, quant il⁴ morust, a mountaunce⁵ de ccccli., dount la moite affiert⁶ a sa porcion, pur ceo qil navoit pas⁷ issu, &c.—*Thorpe*. Ceo bref est porte vers deux executours, et coment qe la graunt destresse est servy, tout soit qe lun veigne,⁹ lautre ne respondra pas sans luy,¹⁰ qar cest accion de Detenue de quei lestatut ne fuit pas mencion, mes soulement de Dette.—*Grene*. Ceste accion est Dette proprement, qar les biens ne pount¹¹ estre les¹² seounz¹³ en la vie soun baroun, ne puis ne furent les seounz tanqe ele les eit recoveri.—*HILL*. Tout est un proces de Dette et de Detenue; et en plee de Detenue lessone et le garrant dattourne serra *de placito Debiti*.—*Thorpe*. Ceo nest forsque forme; mes les accions sont diverses; et *Privilegia Statuti sunt stricti juris*; et en Detenue descript vers executours lun ne respondra pas sanz lautre.—*HILL*. Nous avoms parle entre nous, et il nous semble auxi bien proces de Detenue come de Dette est compris deinz lestatut; et pur ceo responez.—Et puis le bref abatist pur faux Latin.¹⁴

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1342-3.

les
chateux
son baron,
saver la
moite, pur
ceo qe le
baron
navoit pas
issu.¹
[Fitz.,
Respond,
15.]

¹ The words of the marginal note subsequent to Detenue are from 25,184 alone. In Harl. the note is *Renable partie des biens*.

² This count or declaration does not appear upon the roll.

³ L., chateaux.

⁴ L., al jour qil, instead of a tiel jour et tiel lieu, quant il.

⁵ Harl., moustrance; 25,184, amonte.

⁶ 22,552, afferroit.

⁷ L., morust sanz, instead of navoit pas.

⁸ L., soit.

⁹ L., veigne lun, instead of soit qe lun veigne.

¹⁰ L., il ne respondra pas, instead of lautre ne respondra pas sans luy.

¹¹ Harl., peaint; 22,552, poieint; 25,184, poaint.

¹² les is from L. alone.

¹³ Harl., and 25,184, soens; 22,552, a femme, instead of les seounz.

¹⁴ See the end of the other report of the case, which follows (p. 147).

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1342-3.
*Ration-
abili Parte
Bonorum.*

§ Henry le Warde and Margaret his wife brought their writ *de rationabili parte* against Robert de Wulles-thorpe and Thomas de Barnesby as against executors of Margaret's first husband, and demanded against them the reasonable part which belonged to her of the goods which were her husband's. Process was continued against them until they were at the Grand Distress. And on the day given Roger appeared but not the other, wherefore the plaintiffs counted against him that, whereas the common custom of the Realm was that the wife should have her reasonable part of the husband's goods, the aforesaid Roger and the other, against whom she would count, &c., have detained £50 which belong to her, for her reasonable part belonging to her, of her husband's goods, and tortiously for that her husband had, at the time of his death, chattels to the value of £100, to wit, linen and woollen cloths, and gold and silver plate, and several other chattels, of which she made mention in her count, and of which she said that a moiety belonged to her because her husband died without issue, and she said that she had many times gone to the executors and prayed them to make payment, and they would not.—*W. Thorpe*. You see plainly how in her count she has supposed that we have the goods as executors, who have not yet appeared; wherefore we do not understand that in the absence of one of them any law puts us to answer.—*Blaykeston*. The Statute¹ purports that, when a writ of Debt is brought against executors, if at the Grand Distress one of them appears, and another does not, the one who appears shall answer without the other, and now we are in the same case.—*W. Thorpe*. You are not, for this writ is not taken in the nature of a writ of Debt, but in the nature of a writ of Detinue of chattels, in which case the Statute has no place.—*SHARSHULLE*. In case a woman

¹ 9 Edw. III., c. 3.

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§ Henre¹ Warde et Margarete sa femme porterent
 leur bref *de rationabili parte* devers Roger de Wulles-
 thorpe et Thomas de Barnesby come vers executours
 son baron, et demanderent vers eux la resonable
 partie qe a luy affiert des biens qe fuerent a son
 baron. Proces continue vers eux tanqe ils fuerent a
 la Graunt Destresse; a quel jour Roger vient et
 lautre nemi, par quei eux counterent vers luy
 qe, come le comune usage de la Roialme fuit use
 qe la femme averoit sa resonable partie des biens le
 baron, la lavantdit Roger et lautre vers queux ele
 countereit, &c., la ount detenu lli. qe a luy affiert
 pur sa resonable partie qe a luy affiert des biens
 son baron, et pur ceo a tort qe son baron avoit,
 al temps de son murraunt, chateux a la value de
 cli., saver, drapez linez et lainez, et vesselle dore et
 dargent, et plusours autres chateux, des queux ele
 fist mencion en son count, et des queux ele dit qe
 a luy affiert la moite pur ceo qe son baron morust
 saunz issue, et dit qe ele ad sovent venuz a les
 executours et pria eux de faire le paiment, et ils
 ne voilent pas.—*W. Thorpe*. Vous veies bien coment
 en son count ele ad suppose qe nous avoms les
 biens come executours, les queux ne sont pas uncore
 venuz; par quei nentendoms pas qe en leur absence
 nule ley nous mette a respoudre.—*Blaik*. Le Statut
 voet qe la ou bref de Dette est porte vers execu-
 tours, si a la Graunt Destresse lun veigne et lautre
 nemi, qe cesti qe vient respoundra saunz lautre, et
 ore sumes en mesme le cas.—*W. Thorpe*. Non estes,
 qar ceo bref nest pas pris en nature de Dette, einz
 en nature dun Detinue de chateux, en quel cas le
 Statut ne tient pas lieu.—*SCHAR*. En cas qe femme

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 1342-3.
*Rationa-
 bili Parte.*

¹ This report of the case appears as No. 55 in the old editions, in which the names have been confused. No MS. of it has been found,

and there is no extract from it in Fitzherbert's Abridgment. It has, however, been corrected by aid of the record and of the other report.

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1342-3.

makes her attorney by bill on a writ of this kind, the warrant shall be in the words "*in placito Debiti*," or, if the defendant wishes to essoin himself, the essoin shall be "*in placito Debiti*;" and thereby it appears that it is in the case provided by the Statute; for suppose the woman had released to you every action of Debt, by that release she would be ousted from this action; and therefore it seems that it is well enough in an action of Debt that the woman now demands.—*W. Thorpe*. I do not know whether such a release as that of which you speak would oust the wife from this action or not; but as to the essoin of which you speak, that is immaterial, because on a writ of Annuity, if the defendant cause himself to be essoined, his essoin shall be in the words "*in placito Debiti*;" and yet that is not a writ of Debt.—*SHARSHULLE*. It seems to us that this is in the case provided by the Statute; wherefore answer.—*W. Thorpe*. Now, judgment of the writ, because you see plainly how this writ is brought by a man and his wife in respect of a certain debt, and the words of the writ are *quod ei reddere debeant*, which words can have relation but to one of them alone; and therefore we demand judgment of the writ, for the writ should be in the words *eis reddere debeant*.—And by reason of these words the writ was abated by judgment.—See as to this matter Hilary Term in the 18th year.¹

Aid-prayer
by tenant

(30.) § Avowry was made upon John Sturmy and K.,² his wife, for a relief, &c.—*Seton*. We tell you

¹ Y.B., Hil. 18 Edw. III., No. 19.² For the names of the parties, see p. 147, note 2.

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fait son attorne en cest bref par bille, le garraunt serra *in placito Debiti*, ou, si le defendant se voille essoner, lessone serra *in placito Debiti*; et par taunt appiert il qil est en cas de Statut; qar jeo pose qe la femme vous ust relese chescun accion de Dette, par cele relees ele serreit ouste de ceste accion; et par taunt il semble qe assetz est ceo une Dette qe la femme demande a ore.—*W. Thorpe*. Jeo ne say si tiele relees de quel vous parles oustereit la femme de ceste accion ou nemy; mes quant a lessone de quel vous parles, ceo ne toude ne doune, car en bref dannuite, si le defendant face se essoner, son essone dirreit *in placito Debiti*; uncore ceo nest pas bref de Dette.—*SHAR*. Il semble a nous qe est en cas destatut; par quei responez.—*W. Thorpe*. Ore jugement de bref, car vous veiez bien coment cest bref est porte par un homme et sa femme de certeine dette, et le bref voit *quod ei reddere debeant*, quel parole ne poet pas aver relacion forsque a un de eux solement; par quei nous demandoms jugement de bref, car le bref serreit *eis reddere debeant*.—Et par cele parole fuit abatu par agarde.¹—*Vide de hoc Hüllarii xvij.*

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1342-3

(80.)² Avowere fut fait sur Johan Sturmy et K. Eide sa femme pur reliefe, &c.—*Setone*. Nous vous dioms Priere par tenant a

¹ In the roll, after the statement of claim as in the writ, it appears only that the defendant "petit auditum brevis, quo lecto, dicit quod ipse non debet eis inde ad hoc breve respondere, &c., quia dicit quod cum in brevi illo inscribitur quod iidem executores prefate Margaretæ rationabilem partem suam ad valentiam, &c., detinent minus juste, et eam ei reddere contradicunt, ubi deberet esse eis, pro eo quod ipsa et prefatus Henricus, vir suus, sunt

"conjunctim querentes, &c. Et

"petit judicium de brevi, &c.

"Et quia hoc idem videtur

"Curie, &c., consideratum est

"quod predictus executor est inde

"sine die," &c.

² From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Hil., 17 Edw. III., R^o 152, d. It there appears that the action was brought by Geoffrey de Wynnyton, chaplain, against Thomas de Hüllampton, the avowry being upon

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A.D. 1342-3. that the plaintiff has only a term for life by lease from those upon whom the avowry is made, and we pray aid of them.—*Thorpe*. He has not yet pleaded any plea to which he may not himself be a party; judgment whether aid, &c.—*HILLARY*. What should he plead, if the tenements are within your fee?—*Thorpe*. He shall not have aid in respect of rent service, except where he can have a writ of Mesne against the person of whom he prays aid, and that he shall not have, but only a writ of Covenant; and also aid does not lie, except to the intent that the two persons, when they are joined, may be able to disclaim, and that they cannot do.—*HILLARY*. Let him have aid by judgment.

Nuisance in respect of a house and a privy erected at the house across a fish-pond, and the privy so near, &c. And exception was taken to the count because it was in respect of two nuisances &c., and it was adjudged good, &c. (81.) § Alice late wife of Thomas Crosse brought a writ of *Quod permittat prosternere* against William de Ritlynge and Agatha his wife, and William their son, supposing that Matilda mother of the wife had erected a house and a privy to the nuisance of her freehold in Southwark.—And she counted by *Moubray* that, whereas she had a messuage, and two fish-ponds within her said messuage, &c., connected with which she had

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que le pleintif nad qe terme de vie du lees ceux sur queux lavowere est fait, et prioms eide de eux.—^{A.D. 1342-3.}
Thorpe. Il nad rien plede uncore a quei il mesme ^{terme de}
 ne purra estre partie; jugement si eide, &c.—^{sur qe}*HILL*.
 Quei² pledreit il, si les tenements soient deinz ^{lavowere}
 vostre fee?—*Thorpe*. Il navera pas eide de rente ^{fuit fait}
 service, mes la ou il purra aver bref de Meen vers ^{pur relef.}
 celui de qi il prie eide, et ceo navera il pas forsque ^{Et leide}
 bref de Covenant; et auxi eide ne gist pas mes a ^{fut grante}
 cele entente qe eux deux quant il serrount jointz ^{par}
 puissent desclamer, et ceo ne pount ils pas.—^{agarde, et}*HILL*.
 Eit leide par agarde. ^{ount nul}
^{plee plede,}
^{&c.¹}
^{[Fitz.,}
^{Aide, 133.]}

(81.)³ § Alice qe fut la femme Thomas Crosse⁵ Nusance⁴
 porta bref de *Quod permittat prosternere* vers W. et ^{dune}
 A. sa femme, et W. lour fitz, supposant qe M.⁶ la ^{mesoun et}
 miere la femme avoit leve une mesoun et [une ^{une lon-}
 longayne a nusance de son fraunctenement en South- ^{gaigne}
 werke.—Et counta par *Moubray* par la ou ele avoit ^{leve a la}
 un mies, et]⁷ deux estankes⁸ pur pessoun deinz ^{mesoun}
 soun dit mies, &c., as⁹ queux ele avoit une trenche ^{atravers}
^{dun}
^{estanke,}
^{et la}
^{longaigne}
^{si pres, &c.}
^{Et}
^{narratio}
^{calum-}
^{niata quia}
^{de duobus}
^{nocumen-}
^{tis, &c., et}
^{agarde}
^{bon, &c.}

John Sturmy (who, as alleged, held of the defendant and his wife Margaret, as in her right) for services in arrear, and a relief on the death of John's father. The plaintiff held for John's life, by John's lease, and prayed aid of John.

¹ The marginal note subsequent to the words Eide Priere is from 25,184 alone. In Harl. the note is Avowere, in 22,552 Eide Priere: avoere.

² Quei is from 22,552 alone.

³ From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Hil. 17 Edw. III., R^o 196, d. It there appears that the action was brought by Alice

late wife of William Cros against William de Ritlynge, and Agatha his wife, and William son of the same Agatha, the supposition in the writ being that Agatha's mother Matilda, whose heir she was, erected a house and privy in Southwark, to the nuisance of Alice's freehold there.

⁴ Harl., Anusance. The subsequent words of the marginal note are from 25,184 alone.

⁵ Harl., Breunse.

⁶ All the MSS. of Y.B., K.

⁷ The words between brackets are omitted from L.

⁸ L., estanges.

⁹ L., and 25,184, a.

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a trench as far as the river Thames to freshen the said ponds, Matilda had erected a house across the said trench, so that she could not clean the trench, and had also erected a privy so near to the said trench that the filth therefrom enters a pond, by reason whereof a great part of the fish has died, so that whereas she was wont to let the said messuage and the ponds for 100*s. per annum*, she can now let them for only 20*s. per annum*; wherefore she many times prayed Matilda, during Matilda's life, to take it away, &c., and, since Matilda's death, has prayed the defendants to allow her to pull it down, as being tortiously erected, and to her damage, &c.—Exception was taken to the count because different nuisances were supposed by this count.—This exception was not allowed.—And afterwards exception was taken to the writ on the ground that one of the defendants was supposed to be a stranger,

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tanche al ewe¹ de Tamise pur refrescher² les dits estankes,³ la avoit M.⁴ leve un mesoun a travers de la dite⁵ trenche, issint qe le ne poet la trenche munder,⁶ et auxi avoit une longayne⁷ leve si pres a la dite trenche parount la pouour entre lestanke, dount graunt partie de la pessoun morust,⁸ issint qe la ou ele soleit lesser le dit mies⁹ et les estaunges pur cs. par an. ele ne les poet a ore lesser forsque pur xxs. par an.; par quei sovent en la vie M.⁴ ele luy pria qe le¹⁰ loustast, &c., et, puis sa mort, a les defendants qils la soeffrissent¹¹ abatre, &c., a tort, et a ses damages, &c.—Le counte fut chalenge de ceo qe divers nusaunces¹² furent supposes par counte.—*Et non allocatur.*—Et puis le bref fut chalenge, de ceo qe lun fut suppose estraunge, et

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¹ 22,552, a leawe, instead of al ewe.

² The record:—"per quam trencheam eadem aqua, tempore cujuslibet diluvii, solebat currere in stagna prædicta et ea refrigerare."

³ L., estanges.

⁴ All the MSS. of Y.B., K.

⁵ L., and Harl., del dit, instead of de la dite.

⁶ Harl., moundre; 22,552, munder.

⁷ L., longaigne.

⁸ After the word "refrigerare," the declaration is continued in the record as follows:—"prædicta Matildis, mater, &c., infra mesuagium suum ibidem levavit quandam domum ita prope trencheam illam quod maeremium ejusdem domus se extendit ultra trencheam illam, videlicet duos pedes in latitudine et viginti pedes in longitudine, per quod ipsa Alicia non potest trencheam illam

"mundare quando necesse est, &c.

"Et etiam eadem Matildis levavit

"ibidem quandam latrinam ita

"prope trencheam prædictam quod

"exitus et putredo ejusdem latrinæ

"descendit in trencheam illam,

"per quod aqua quæ currit per

"trencheam illam et que refrigerare

"deberet stagna prædicta est

"ita corrupta quod pisces in eisdem

"stagnis existentes moriuntur et

"periclitantur propter corruptionem

"illam et putredinem

"latrinæ prædictæ, et putredo et

"corruptio latrinæ prædictæ intrat

"mesuagium prædictæ Aliciæ [per]

"quod nullus in eodem mesuagio

"commorari potest propter corruptionem

"et malum odorem latrinæ

"prædictæ." The rest of the declaration is to the same effect as in

the report.

⁹ L., mees.

¹⁰ L., and Harl., qil.

¹¹ L., and 22,552, soeffrissent.

¹² Harl., anusaunces.

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A.D. 1842-3. and not the heir of the person who set up the nuisance.—And this exception was not allowed.—Afterwards view was demanded and granted.

Fine. (32.) § Note that three strangers granted by fine that certain tenements, which one A. held for term of his life, of their inheritance, and which were to return to them and their heirs after his decease, should remain to one B., to him and to his heirs for ever. And exception was taken to the form of the fine by the Chirographer by reason of the supposition of equal right in common in them all. By way of acknowledgment one shall acknowledge right only to one person; and also warranty cannot extend to three persons and their heirs unless they should be parceners.—And, notwithstanding, the fine was admitted.

Avowry. And afterwards the plaintiff by judgment recovered his damages assessed, &c., because the deed was only that of her husband. (33.) The Abbot of Peterborough avowed the taking on the ground that Geoffrey de la Mare husband of Cecilia, the plaintiff, held of his predecessor the manor of Thurlby, &c., by knight service, which Geoffrey died, and after his death by reason of the non-age of Geoffrey son of Geoffrey the same manors were seized into the hand of his predecessor by reason of wardship; and by this indenture produced his predecessor assigned the

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noun pas heir a celuy qe ceo leva.—*Et non allocatur.*—Puis le vewe fut demande et graunte, &c.¹ A.D.
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(82.)² § *Nota* qe iij³ estraunges graunterent par Fine. fyn qe certains tenementz, queux un A. tient a terme de sa vie, de lour heritage, et qe apres son⁴ deces a eux et a lour heirs deveireint⁵ retourner, remeindreint a un B., a luy et a ses heirs a touz jours. Et par le Cirograffier la fourme de la fyn⁶ fut chalenge pur la supposaille de owel dreit en comune en touz. Par voie de conissaunce homme ne conustra dreit forsque a un; et auxi la garrantie ne se purra pas esteindre a iij³ et a lour heirs, sils ne fuissent parcaners.—Et, *non obstante*, la fyn est resceu.

(83.)⁷ § Labbe de Burgh Seint Piere avowa la prise par la resoun qe Geffrei⁹ de la Mare baroun Cecile, qe se pleint, tient de son predecessour le maner de Thurlby,¹⁰ &c., par service de chivaler, quel G. morust, apres qi mort,¹¹ par le noun-age G. le fitz G., mesmes les maners¹² furent seisis en la mayn son predecessour par resoun de garde; et par ceste endenture son predecessour assigna le

Avowere.
Et puis
apres le
pleintif
par agarde
recoveri
ses
damages
taxes, &c.
*quia hoc
non
fuit nisi
factum
viri sui,
&c.*⁸

¹ Nothing subsequent to the grant of view appears in the record.

² From L., Harl., 22,552, and 25,184.

³ 22,552, iiij.

⁴ L., lour.

⁵ So all the MSS. except L., which has *deyvent*.

⁶ The words of la fyn are omitted from L.

⁷ From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Hil., 17 Edw. III., R^o 196. It there appears that the action of Replevin was brought by Cecilia formerly wife of Geoffrey

de la Mare against the Abbot of Peterborough. The avowry in the report agrees very closely with that found on the roll.

⁸ The words of the marginal note subsequent to Avowere are from 25,184 alone. They would more appropriately form the conclusion of the report.

⁹ L., Giffrai.

¹⁰ MSS. of Y.B., K. Thurlby is from the roll.

¹¹ All the MSS. except L., par quei, instead of *apres qi mort*.

¹² 25,184, *terres*.

[Fitz.,
Avowere,
95.]

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manor of Thurlby, of which the place of taking, &c., in the name of dower, to Cecilia and Thomas de Lodelowe, her second husband, in satisfaction, &c. And because the manor of Thurlby was worth more, by four marks *per annum*, than reasonably belonged to her dower, Thomas and Cecilia granted by the same deed to the Abbot's predecessor, &c., and to his successors, four marks *per annum*, to be taken from the said tenements, with a clause of distress, &c., to be paid, &c., until the lawful age of the heir, whereof his predecessor was seised of one mark for the first term. And, because the residue due for the first year, to wit three marks, and also the rent for five years were in arrear, for the three marks he avowed the taking as in parcel of the tenements so assigned to Cecilia in dower in the form aforesaid.—*Moubray*. You see plainly how they have admitted that it is the lady's reasonable dower, and this

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maner de Thurlby,¹ dont le lieu, &c., en noun de dower a C. et Thomas de Lodelowe, soun seconde baroun, en allowance, &c. Et pur ceo qe le maner de Thurlby² valust plus, par iiij marcs par an, qe naffereit a sa dower,³ ils graunterent⁴ par mesme le fait al Abbe predecessour, &c., et ses successors, iiij marcs par an a prendre de les ditz tenementz, ove clause de destresse, &c., a paier, &c., tanqe al leal age leir, dount soun predecessour fut seisi dun marc pur le primer terme. Et pur ceo qe lè remenant del primer an, saver iiij marc, et auxi la rente pur v ans furent arere, pur les iiij marc il avowa la prise come en parcele des tenementz issint assignes a luy en dower en la fourme avant dite. —*Moubray*.⁵ Vous⁶ veiez bien coment ils ont conu qe cest le renable dower la dame, et cest suppose

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¹ Thurlby is from the roll; Harl., B.; the other MSS., L.

² Thurlby is from the roll; MSS. of Y.B., L.

³ The roll "quam fuit rationabilis dos ipsius Cecilie."

⁴ The roll "idem Thomas et Cecilia concesserunt."

⁵ L., *Mounbray*. Moubray's plea (after a protestation) is represented in the roll as follows:—"dicit quod predictus Abbas sumit fundamentum et causam advocare sui predicti de eo quod ipse asserit quod manerium illud est et fuit majoris valoris per quatuor marcas per annum quam sit rationabilis dos ipsius Cecilie, per quod idem manerium assignatum fuit ipsi et predicto viro suo, reddendo ipsi Abbati et successoribus suis quatuor marcas per annum, durante minori etate predicti Galfridi filii Galfridi, et ad hoc probandum et affirmandum pro-

"tulit scriptum predictum; et per idem scriptum magis intelligendum est predictum manerium de Thurleby assignatum fuisse ipsi Cecilie pro rationabili dote sua exoneratum a predicto redditu quam alio modo, maxime cum in eodem scripto nulla sit mentio an predictum manerium sit majoris valoris quam fuit rationabilis dos ipsius Cecilie vel minoris, &c.; et etiam idem scriptum intelligi debet factum predicti Thomae quondam viri ipsius Cecilie, qui rationabilem dotem uxoris sue onerare non potuit nisi pro termino vite sue tantum; unde petit iudicium si predictus Abbas nunc virtute scripti predicti rationabilem dotem ipsius Cecilie onerare, seu distractionem predictum in hoc casu advocare possit," &c.

⁶ Harl., Sire, vous.

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is supposed by the deed, and as to what they say about a charge, there is nothing but the husband's deed, which cannot charge the wife after his death; judgment, and we pray our damages.—*Pulteney*. Since they do not deny the acceptance of dower in the manner alleged, and we are also ready to maintain that the manor was worth more, by four marks *per annum*, than the amount of her dower, and that is not contrary to what is supposed by the indenture, we demand judgment, because we understand that, as well by assignment of dower as by allotment of a purparty between parceners, in case one have more than another, rent can be reserved.—*HILLARY*. If more dower was assigned than reasonably belonged to her, she yielding something certain to the person who assigned, that would be one thing; but your specialty supposes first that the manor was assigned for her reasonable dower, and afterwards by another clause the husband and his wife charged themselves with the rent; and the deed does not purport that the manor assigned was worth more than the amount of her dower.—*Thorpe*. You will give your judgment in accordance with the whole deed, and not by parcels; and when they granted the rent on the assignment, that is equally the same in effect as if the deed in its entirety purported yielding so much; and since the wife is tenant, and continues her estate by force of the same assignment, she ought by law to be charged.—*SHARSHULLE*. This rent is reserved until the lawful age of the infant; what will become of

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par le fait, et ceo qils parlent de charge nest forse le fait soun baroun qe ne poet charger la femme apres son deces; jugement, et prioms nos damages.—*Pult.*¹ Desicome ils ne dediount pas la resceite del dower par la manere, et auxi prest sumes de meyntener qe le maner valust plus, par iiij² marcs par an,³ qe son dower namounte, et ceo nest pas a contrarie de ceo qest suppose par lendenture, nous demandoms jugement, qar nous entendoms auxi bien par assignement de dower come par alotement de purpartie entre parceners, en cas qe lun eit⁴ plus qe lautre, rente poet estre reserve.—*HILL.* Si dower fut⁵ assigne plus qe naffereit, rendant un certain a celui qe assigna, ceo serreit ascune chose; mes vostre especialte suppose primes qe ceo fut assigne pur son renable dower, et puis par autre clause le baroun et sa femme se⁶ chargerent en le rente; et le fait ne voet pas qe le maner assigne valust plus qe son dower namountereit.—*Thorpe.* Vous ajuggerez solonc tout le fait, et noun pas par parcelles; et quant ils graunterent la rente sour lassignement, cest owel en effect come si tout⁷ le fait voleit rendant tant; et quant la femme est tenaunt, et continue son estat par force de mesme lassignement, ele deit par ley estre charge.—*SCHAR.* Cesty rente est reserve tanqe al leal age lenfant⁸; ou devendra⁹ il

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¹ Pulteney's pleading is represented on the roll as follows:—"Et Abbas dicit quod ex quo prædicta Cecilia non dedit prædictum manerium de Thurleby esse majoris valoris per quatuor marcas per annum quam sit rationabilis dos ipsius Cecilie, prout ipse per advocare suum supponit, nec quia ipsa recepit manerium prædictum cum onere prædicto, &c., et ipsa de eodem manerio adhuc seisisita existit virtute scripti prædicti, unde petit iudicium si ipse

" prædictam captionem pro prædicto redditu justam advocare non possit," &c.

² L., iij.

³ The words par an are from L. alone.

⁴ L., ad.

⁵ L., soit.

⁶ se is omitted from L.

⁷ tout is omitted from L.

⁸ All the MSS. except L., lage le heir, instead of al leal age lenfant.

⁹ L., devendreit.

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it afterwards?—*Thorpe*. The heir himself would have it afterwards if he wished. And suppose that in the assignment there had been excepted a certain quantity of land, she would have held only in accordance with the assignment; and if she took more than the amount of her dower, and this charge was reserved, why should it not continue?—*Moubray*. The person who assigned shall never be admitted to say that what was assigned was anything but reasonable dower, and that cannot by any law be charged.—*Thorpe*. They plead two pleas: one is that this is only the husband's deed; the other is that, although the husband was a party, because this is only dower, it should be discharged.—Afterwards in Trinity Term HILLARY adjudged that the plaintiff should recover damages assessed by the Court at four marks, and that the avowant should be amerced.

Quare impedit
for the
King, who
took his
title on the
ground of
his own
seisin, but
as in
another's

(84.) § The King brought a *Quare impedit* against Henry Hillary in respect of the church of Somercoates, and counted that Aleyn Gymel was seised of the advowson in the time of King Richard, &c., and gave it to the predecessor of the present Abbot of Langonnet, to him and to his successors, which Abbot made Thomas de Multon his general attorney for the purpose of presenting to that church and others, and this

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apres?—*Thorpe*. Leir avereit¹ apres sil voet. Et jeo pose qen lassignement il ust forpris certeine quantite de terre, ele nust tenu² forsqe solonc lassignement; et si ele prist plus, et cele charge fut reserve, purquei ne demura ceo pas?—*Moubray*.³ Celuy qassigna ne serra jammes resceu a dire qe ceo fut autre qe resonable dower, quel par nule ley serra charge.—*Thorpe*. Ils pledent deux plees: un qe ceo nest forsqe le fait le baroun, autre qe tout fut⁴ le baroun partie, pur ceo qe ceo nest qe⁵ dower qe ceo serreit descharge.—*Postea Termino Trinitatis* HILL. agarda qe le pleintif recovereit damages taxes par la Court a iiij marc, et lavowant en la mercie.⁶

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(84.)⁷ § Le Roi porta *Quare impedit* vers Henre Hillary del eglise de Somercotes, et counta qe Aleyn Gymel⁸ fut seisi de lavowesoun en temps le Roi Richard, &c.,⁹ et la dona al predecessour Labbe de Langonete¹⁰ gore est, a luy et a ses successors, quel Abbe fist Thomas de Multone soun general attourne de presenter a cele eglise et autres, le quel

Quare impedit
pur le Roy,
qe prist
son title
par cause
de sa
seisine
demene,
mes come
en autri

¹ All the MSS. except L., avowers.

² L., eu.

³ L., *Mounbray*.

⁴ L., ne fut.

⁵ 25,184, nest pas, instead of ceo nest qe.

⁶ The last sentence is found only in L. and Harl. The judgment appears thus in the roll:—"Et quia videtur Curie quod predictus Abbas predictam captionem justam advocare non potest virtute scripti predicti, quod quidem scriptum fuit factum predicti Thomae quondam viri, &c., qui dotem predictae Cecilie onerare non potuit, consideratum est quod predicta Cecilia recuperet versus predictum Ab-

"batem damna sua, quae taxantur ad quatuor marcas. Et Abbas in misericordia."

⁷ From L., Harl., 22,552, and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 16 Edw. III., R^o 114. It there appears that the action was brought by the King against Henry Hillary, knight, in respect of a presentation to the church of Somercotes (Lincolnshire). The declaration is to the same effect in the record as in the reports.

⁸ L., Gentil.

⁹ The words en temps le Roi Richard, &c., are omitted from all the MSS. except 25,184.

¹⁰ 25,184, Langtone.

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right.
And he
counted of
a presenta-
tion as
having
been made
by the
other in
whose
right he
claimed.
And
thereupon
this issue
was taken
against
the King
(notwith-
standing
his own
seisin, and
a return
into the
Chancery
by the
Escheator)
just as it
would
have been
taken
against
the person
in whose
right the
King
claimed.
So note
what was
said by
SHARS-
HULLE,
and the
end of this
plea.

Thomas, as general attorney of the said Abbot, presented A.,¹ &c., in the time of the present King's grandfather; and after A.'s death the church is now void. Then, because the Abbot is an alien, and in the power of France, the King seized his possessions, fees, &c., by reason of the war, and afterwards commanded the Escheator to make inquisition, and to certify him as to the lands, fees, and advowsons of which the said Abbot was seised. And the Escheator made inquisition, &c., and certified that, among other lands, fees, &c., this advowson was in his hand, and that he had seized it, &c. And thus our Lord the King is seised, and so it belongs to him to present.—*Richemunde*. You see plainly how he has made the Abbot's predecessor purchaser of the advowson, and he has not shown that Aleyn Gymel, from whom the Abbot is supposed to have purchased, presented; so he does not show that his feoffor was in possession. Besides, he takes divers titles: one is in general terms that the King has seized all the possessions, &c.; another is that by reason of Office found and returned the King is seised. And afterwards *Richemunde* passed over, and said that A. was not admitted on the presentation of Thomas de Multon, as the Abbot's general attorney, in right of the Abbot, and further, in order to have a writ to the Bishop, he alleged that in the time of King Henry one Thomas de Multon, of Egremont, was seised of certain lands to which the advowson, &c., and presented as guardian of an heir under age; and he showed that Hillary now had the estate of one who had the right for term of life in the

¹ Walter de Raytheby, according to the record.

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Thomas, come general attourne le dit Abbe, presenta A.D. 1842-3.
 A., &c., en temps laiel, apres qi mort leglise est dreit. Et
 ore voide. Donc, pur ceo qe Labbe est aliene, et del conta dun
 poier² de³ Fraunce, le Roi seisisit ses possessiouns, presente-
 fees, &c., par cause de la guerre; et puis maunda ment fait
 al Eschetour denquere,⁴ et de luy certifier de que- com par
 les terres, fees, et avowesouns le dit Abbe fut seisi. lautre en
 Et Leschetour enquist, &c., et certifia gentre autres qi dreit il
 terres, fees, &c., cest avowesoun fut en sa mayn, et clama.
 qil lavoit seisi, &c. Et issint est nostre Seignur le Et sur ceo
 Roi seisi, et issint a lui appent a presenter.—*Richem.* non ob-
 Vous vieiez bien comment il ad fait le predecessour stante sa
 Labbe purchaceour de lavowesoun, et il nad pas seisine
 moustre qe Aleyn Gymel,⁵ de qi il duist aver pur- demene,
 chace,⁶ presenta; issint ne moustre il pas qe son et retourne
 feffour fut en possession. Ovesqe ceo, il prent divers en Chan-
 titles⁷: un est qe le Roi generalment ad seisi touz⁸ auxi avant
 les possessiouns, &c.; autre est qe par cause doffice come ust
 trove et retourne le Roi est seisi. Et puis passa luy come
 outre, et dit⁹ qe A. ne fut pas resceu al presente- en qi dreit
 ment Thomas de Multone, come general attourne le Roy
 Labbe, en le dreit Labbe, et outre, pur aver¹⁰ bref clama.
 al Evesqe, alleggea qen temps le Roi H. un T. de *Sic nota de*
 Multone de Egremount de certeinz terres a quei dicto Sch.
 lavowesoun, &c., fut seisi, et presenta come gardein *et de*
 un heir¹¹ deinz age; et moustra qil avoit son *fine istius*
 estat qad le¹² dreit a ore¹³ pur terme de vie de la *placiti.*¹

¹ The words of the marginal note subsequent to *Quare impedit* are from 25,184 alone.

² Harl., and 22,552, power; 25,184, poaire.

³ L., del Roi de.

⁴ L., enquerre.

⁵ L., Gentil.

⁶ L., il purchacea; 25,184, il ad purchace, instead of il duist aver purchace.

⁷ L., diverse title, instead of divers titles.

⁸ Harl., toux.

⁹ *Richemunde's* words beginning here represent the plea found on the roll. It is better given in the other report below, p. 172.

¹⁰ aver is from L. alone.

¹¹ L., enfant.

¹² The words estat qad le are omitted from L.

¹³ The words qad le dreit a ore are omitted from 22,552.

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land to which, &c.; and he prayed a writ to the Bishop.—*Seton*. He does not deny the King's seisin, nor the Abbot's purchase; and as to his having traversed the presentation made by Thomas, as the Abbot's general attorney, he has not shown that Thomas presented in any other manner than in right of the Abbot; and the seizure by the King, and the Office found are admitted; wherefore we pray a writ to the Bishop.—*SHARSHULLE*. As to your commencement that Aleyn Gymel was seised and gave to the Abbot, that is not matter to affirm right in the Abbot unless you had affirmed Aleyn's possession by possession in presenting, and that you have not done; therefore the Abbot's possession had by the presentation by his general attorney is the ground of the King's title, and that is traversed. And as to what you say as to the advowson having been seized by virtue of Office, that does not charge, particularly when the advowson is in gross, for with respect to an advowson not capable of being handled, which cannot be seized except by words, it is otherwise than with respect to land, because even though an advowson, as in gross, be seized into the King's hand by words, the person who was seised of it cannot know this, but must await his time to present on voidance and then raise a dispute, and, if the King bring a *Quare impedit*, his defence, in the form of an answer that the King had not right, will be in place of a suing out of the King's hand.—*W. Thorpe*. As to the first point, which you mention, that it cannot be understood that Aleyn Gymel was seised because we have not counted that he

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terre a quei,¹ &c.; et pria bref al Evesqe.—*Setone*. Il² ne dedit pas la seisine le Roi, ne le purchace Labbe; et de ceo qil ad traverse le presentement fait par Thomas, come general attourne Labbe, il³ nad pas moustre qil presenta par autre manere qen le dreit Labbe; et⁴ le seisir le Roi et loffice trove est conu; parquei nous prioms bref al Evesqe.—*SCHAR*. Quant a ceo qe vous comencez qe Aleyn Gymel fut seisi et dona a Labbe, ceo nest pas a la matere daffermer dreit en Labbe si vous nussez afferme la possession Aleyn par possession de presenter, et ceo navetz vous pas fait⁵; donques la possession Labbe ew par le presentement de son general attourne en son dreit est cause de tite le Roi, et cella est traverse. Et a ceo qe vous parlez de ceo qe lavowesoun est seisi⁶ par office ceo ne charge pas, nomement quant cest un gros, qar davowesoun⁷ nient maynable⁸ qe ne poet estre seisi forsque par parole est autre qe de terre, qar mesqe avowesoun come gros soit seisi⁶ en la mayn le Roi par parole, celui qe fut seisi ne poet saver mes⁹ gaiter son temps de¹⁰ presenter a la voidance et donques mettre debat, et, si le Roi porte *Quare impedit*, son defens par voie de respons qe le Roi navoit pas dreit serra en lieu de suite hors de la mayn le Roi.—*W*.¹¹ *Thorpe*. Quant al primer point qe vous dites qil¹² ne poet estre entendu qe Aleyn Gymel fut seisi pur ceo qe nous navoms pas counte qil presenta,

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¹ The words de la terre a quei are omitted from 22,552.

² This seems to represent the replication which immediately follows the plea on the roll. It is better given in the other report below (p. 175).

³ All the MSS. except L., ne il.

⁴ L., ne.

⁵ The words et ceo navetz vous pas fait are from L. alone.

⁶ seisi is omitted from L.

⁷ Harl., davowere.

⁸ L., manuable.

⁹ L., forge.

¹⁰ The words temps de are from L. alone.

¹¹ W. is omitted from L. and Harl.

¹² qil is from L. alone

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presented, it would be possible for him to be seised, even though he did not present, through purchase from another person who did present, or perchance he presented before time of memory, which fact cannot be alleged, so that, since it can be understood that he was seised, although presentation be not affirmed in him, when his possession is not traversed you cannot understand but that he was seised. Therefore, when he gave to the Abbot, which is not denied by them, and his general attorney presented, which is not denied, you ought not to understand, since the Abbot was seised of the advowson, that the presentation was made otherwise than in right of the Abbot, unless any other special fact were alleged; and even though the presentation by Thomas de Multon were traversed in general terms, that would not make an issue, because, if the King was seised of the advowson, whether rightfully or wrongfully, he would have the presentation. And as to the third point which you mention, that an advowson, when it is in gross, cannot be seized into the King's hand by words, unless he have right, in some cases it is so, and in some cases not: for if the Escheator or other Officer seized into the King's hand without cause, and without Inquest of Office, I quite think that the very patron is not out of possession, because if the Officer were to take such action with respect to land, he would be a disseisor; but if the Escheator, with warrant, take an Inquest which serves for the King's benefit, and he seizes, he does no wrong in seizing, as the fact is in our case, and whether the King had right, or committed wrong, the thing seized shall be sued out of his hand, as well in the case of an advowson as in the case of anything else,

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il purreit estre seisi, tout ne presenta il pas, par purchace dautre qe presenta, ou par cas il presenta devant temps de memorie qe ne poet estre allegge, issint qe quant ceo poet estre entendu qil fut seisi, tout ne soit pas presentement afferme en luy, quant sa possession nest pas traverse, vous ne poiez entendre forsque il fut seisi. Donges, quant il dona a Labbe, qe nest pas dedit deux, et son general attourne presenta, qe nest pas dedit, vous ne devez entendre, del houre qe Labbe fut seisi de lavowesoun, qe le presentement fut¹ fait forsque² en le³ dreit Labbe, si autre fait especial ne fut allegge; et tout [fut ceo qe le presentement Thomas de Multone fut generalment traverse, ceo ne freit pas issu, qar si le Roi fut seisi de lavowesoun],⁴ fut ceo a dreit fut ceo⁵ a tort, il avereit le presentement. Et quant al tierce point qe veus dites, qe lavowesoun, ou ele est⁶ gros, par parole⁷ ne poet estre seisi en la mayn le Roi, sil nust dreit, en cas il est issint, et en cas nient; qar si Leschetour ou autre ministre seisit en la mayn le Roi sanz cause, et sanz Enquest doffice, jeo crey⁸ bien qe le verroi⁹ patroun nest pas hors de possession, qar sil feist¹⁰ tiele¹¹ chose de terre il serreit disseisour; mes si Leschetour par garrant preigne enquest qe sert¹² pur le Roi, et il seisit, il [ne fait pas tort en le seisir, come est en nostre cas,¹³ et le quel le Roi avoit dreit ou tort],⁴ homme suera la chose hors de sa mayn, si bien davowesoun come dautre chose,

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1342-3.¹ L., ne fut.² forsque is omitted from L.³ le is from 22,552 alone.⁴ The words between brackets are omitted from 22,552.⁵ All the MSS. but L., ou, instead of fut ceo.⁶ L., ove le, instead of ou ele est.⁷ 22,552, plee.⁸ L., crai.⁹ Harl., verray.¹⁰ L., fait.¹¹ L., cel.¹² L., serra; 22,552, siert; 25,184, seert.¹³ The words en le seisir, come est en nostre cas are omitted from L.

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by Petition.—*Moubray*. Suppose the King had taken his title from a presentation made by the Abbot himself, that presentation would be traversable, and so also is this, or else you would say that the King would have title without presenting, because he is seised of the advowson.—*Thorpe*. Presentation is only a matter of form in counting, and it is not traversable; and in many cases one shall have a *Quare impedit* without presentation, for if I recover an advowson against you by writ of Right, and afterwards I count that you presented, and that after I recovered against you, that presentation is not traversable. And also if the King seize an advowson which has been held in appropriation from time immemorial, still he shall present, and yet he shall not count of any presentation, but only of the seisin of him who held it appropriated.—*SHARS- HULLE*. I do not know that.—*Blaykeston*. When the King brings his *Quare impedit*, and takes his title in another's right, he by his suit gives to the defendant such an answer as the defendant would have against the person in whose right he claims; and in this action of *Quare impedit* the King's title and his possession shall be tried as much as they would be by Petition, because it is in lieu of Petition when his *Quare impedit* is brought.—*PARNING*. It is strange that you have counted that Aleyn Gymel was seised of the advowson, and do not affirm possession in him, nor in any one whose estate he had, by presentation; and also the averment is extraordinary, in traversing to the effect that Thomas de Multon did not present as the Abbot's procurator, in the Abbot's right—without

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par Peticion.¹—*Moubray*. Jeo pose qe le Roi ust² pris son tittle del presentement Labbe mesme, cel presentement serreit traversable, et auxi est ceo cy, ou autrement vous dirrez qe le Roi avereit tittle sanz presenter, pur ceo qil est seisi de lavowesoun.—*Thorpe*. Le presentement nest forsque pur fourme de counter,³ qe nest pas traversable; et en meynt cas homme avera *Quare impedit* sanz presentement, qar si jeo recovere devers vous, par bref de Dreit une⁴ avowesoun, [et puis jeo counte qe vous presentastes, et puis qe⁵ jeo recoverai vers vous, cel presentement nest pas traversable. Et auxi si le Roi seisi une avowesoun qad este tenu en propre oeps de tut temps, unqore il presentera, et si ne countera il de nul presentement, mes soulement de la seisine celuy qe le tient]⁶ en propre oeps.—*SCHAR*. Jeo ne sai.—*Blaik*.⁷ Quant le Roy porte son *Quare impedit*, et⁸ prent son tittle en autri dreit, il doune al defendant par sa suite autiel respons come il avereit vers celuy en qi dreit il cleyme; et en cest accion de *Quare impedit* le tittle le Roi et sa possession serra si avant trie⁹ come serreit par Peticion, qar cest en lieu de Peticion quant son *Quare impedit* est porte.—*PARN*.¹⁰ Il est merveille qe vous avez counte qe Aleyn Gymel fut seisi de lavowesoun, et nafferme¹¹ pas possession en luy, ne dascun qi estat il ad, par presentement; et auxi laverement est merveillouse a traverser qe Thomas de Multone ne presenta pas come procurateur Labbe, en le dreit Labbe, sanz

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¹ The words par Peticion are omitted from 22,552.

² L., avoit.

³ Harl., coste; 22,552, tut.

⁴ The words de Dreit une are omitted from L.

⁵ The words et puis qe are omitted from 25,184.

⁶ The words between brackets are not in L.

⁷ L., Basset.

⁸ The words porte son *Quare impedit*, et are not in L.

⁹ trie is not in L.

¹⁰ L., PARVENK.

¹¹ L., naffermites.

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showing how he did present in another manner ; but it cannot be understood otherwise than that Thomas de Multon and Thomas de Multon of Egremont are one and the same person, and, if so, they have shown that he presented as guardian, &c.—*Thorpe*. Even if it were the case that you must understand the two to be one and the same person, still what they say that he presented in another manner is not taken as an answer to the King, but in order to make a title for themselves to which the King cannot have a traverse.—And afterwards, in accordance with the opinion of the Court, the averment was taken as to whether the clerk was admitted on the presentation of Thomas de Multon, the Abbot's procurator, or not.—*PARNING* said in this plea that *Quare impedit* is not limited. And this he said because one may be able to count of a presentation before time of memory.—*Thorpe*. No ; one shall not be able to count of a presentation before time of memory when the presentation is not traversable, and one cannot have inquest in respect of so remote a time.—*PARNING*. One has heard of a warranty de-raigned by a specialty executed before time of memory, for a matter commenced before time of memory, and continued in fact afterwards, can be averred.—*Thorpe*. I think that one would fail in respect of a warranty given before time of memory, where the warranty commenced by specialty, unless it was of record, and so could not be denied.—And note that it is the common opinion of the Court that it is not the proper course to sue an advowson which is in gross out of the

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moustrer coment il presenta par¹ autre manere; mes homme ne poet entendre mesqe Thomas de Multone et Thomas de Multone de E. est une mesme persone, et *si sic* ils ount moustre qil presenta come gardein, &c.—*Thorpe*.² Tout fut ceo qe vous entendrez touz deux une mesme persone, uncore ceo qils parlent qil presenta par autre manere nest pas pris pur respons an Roi, mes pur faire title a eux a qi le Roi ne poet aver traverse.—Et puis, par avis de la Court, laverement est pris le quel le clerk³ fut resceu al presentement Thomas de Multone, procuratur Labbe, ou noun.⁴—*PARN*.⁵ dit en ceo plee qe *Quare impedit* nest pas limite. Et ceo parla il⁶ pur ceo qe homme purra counter de presentement devant temps de memorie.—*Thorpe*. Nanil; homme ne purra pas counter de presentement devant temps de memorie quant le presentement nest pas⁷ traversable, et de si haut temps homme ne purra pas enquerre.⁸ —*PARN*.⁵ Homme ad oy dune garrantie derene⁹ par especialte fait devant temps de memorie, [qar chose commence avant temps de memorie],¹⁰ et continue en fait puis, poet estre avere.—*Thorpe*. Jeo quide qe homme faudra¹¹ de garrantie fait¹² devant temps de memorie, la ou garrantie comence par especialte¹³, si ceo ne fut de recorde, qe ne purreit estre dedit. —*Et nota* qe cest comune opinion de Court qil ne bosoigne pas suer avowesoun qest gros hors de la

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1342-3.¹ L., en.² L., SCHAR.³ L., Roi.⁴ For the pleadings subsequent to the replication, and the mode in which issue was joined, see the note at the end of the other report of the case, below p. 183, note 1.⁵ L., PARVENK.⁶ 25,184, par la ou, instead of parla il.⁷ L., nest pas; other MSS., est.⁸ L., enquerre.⁹ Harl., desrene.¹⁰ The words between brackets are omitted from Harl.¹¹ L., fraudreit.¹² All the MSS. but L., par especialte fait.¹³ The words la ou garrantie comence par especialte are from L. alone.

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*Quare
impedit*

§ The King brought a *Quare impedit* against Henry Hillary, knight, and counted that Henry tortiously hindered him from presenting his clerk to the church of Somercoates which is void, and is of his gift because the temporalities of the Abbot of L. are in his hand by reason of the war, &c.; and he counted that one Aleyn Gymel was seised of the same advowson in the time of King Richard, and gave the same advowson to the Abbot of L. and to his successors for ever, by force whereof the said Abbot and his successors were seised until the time of King Edward the father of the present King, at which time the church became void, wherefore one Thomas de Multon, general procurator of the said Abbot, by virtue of the Abbot's letters, to present to that church and other churches which the said Abbot had in England, presented, in the said Abbot's name, one W. R., his clerk, who on his presentation was admitted, &c. And because the Abbot was an alien, the King commanded his Escheator to seize all the temporalities of the said Abbot into his hand. And the Escheator returned into the Chancery that he had seized them, after which seizure it was said on the King's behalf that the church became void, and so it belongs to the King to present, and Henry disturbs him.—*Richemunde*. You see plainly how the King took his title from the fact that Aleyn Gymel was seised of the same advowson and gave it to the Abbot of L., &c., and he does not show that this Aleyn Gymel presented; wherefore we do not understand that the King will or ought to be answered as to this declaration.—*W. Thorpe*. Since one may

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mayn le Roi, tout eit Leschetour seisi, et par enquest, qe sert au Roi, mes mettre debat a la proscheine voidance.—*Quare*.—*Et vide hoc ex intentione istius placiti* par laverement pris.¹

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§ Le² Roy porta *Quare impedit* vers Henre Hillary, *Quare impedit*. chivaler, et counta qe a tort luy destourba a presenter son clerk al eglise de S. qe voide est, et a son doneson appent par resoun des temporaltes Labbe de L. en sa main esteaunts pur la guerre, &c.; et counta qe un a A. G. de mesme lavoweson fust seisi en temps le Roi Richard, et mesme lavoweson dona al Abbe de L. et a ses successours a touz jours, par force de quel le dit Abbe et ses successours fuerent seisis tange en temps le Roi E. pere, &c., a quel temps leglise se voida, par quei un T. de M., general procuratour le dit Abbe, par ses lettres, de presenter a cele eglise et autres qe le dit Abbe avoit en Engleterre, en noun le dit Abbe, presenta un W. R., son clerk, qe a son presentement fuist resceu, &c. Et, pur ceo qe le Abbe fuit aliene, le Roi maunda a son Eschetour de seisier toutz les temporaltes le dit Abbe en sa main. Et Leschetour retourna en la Chauncellerie qil les avoit seisi, puis quel seisir il dit qe leglise se voida, issint appent al Roi de presenter, et Henre luy destourbe.—*Ric*. Vous veiez bien coment le Roi prist son title de ceo qe A. G. fuit seisi de mesme lavoweson et la dona a Labbe de L., &c., et ne moustre pas qe cesti A. G. presenta; par quei nentendoms pas qe le Roy voille ou devoit a cele demoustrance estre respondu.—*W. Thorpe*. Del heure qe homme

¹ The last sentence is from 25,184 alone.

as No. 51 in the old editions. It has been corrected by the record. Note 4, p. 17, is applicable to it.

² This report of the case appears

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be seised of an advowson without presenting, he can also make a gift thereof without presenting; and even if it were the fact that Aleyn Gymel presented, if that presentation was before the time of King Richard, we could not take title from that presentation in this possessory writ; wherefore we pray a writ to the Bishop for the King.—*Richemunde*. You see plainly how he supposes that Aleyn Gymel gave the advowson to the Abbot, and has not given any baptismal name to the Abbot who took an estate by the gift; and he has also said in his declaration that Thomas, the general procurator of the said Abbot presented to the same church, and has not given any baptismal name to this Abbot, whose procurator, &c.; wherefore we demand judgment.—And this exception was not allowed.—*Richemunde*. Again we say that there is one Thomas de Multon of Egremont, and one Thomas de Multon of Fraunketon, and we pray that he declare with certainty which of them presented as procurator of the Abbot of L.—*SHARSHULLE*. He shall not do so, for he says that Thomas de Multon was assigned by the Abbot's letters to present to this church and to other churches, &c.; and thereby he has sufficiently declared which of them presented.—*Richemunde*. We make protestation that we do not admit Aleyn Gymel's seisin of the same advowson, nor that the advowson is seized into the King's hand, but we say that this W. R., after whose death the King supposes the church to be void, was not presented by Thomas de Multon, as general procurator of the Abbot of L., as the King supposes; ready, &c. And, in order to have a writ to the Bishop, we say that Thomas de Multon, of Fraunketon, was seised of four acres of meadow, to which the advowson was appendant, in the time of King Henry, at which time the church became void, wherefore the said Thomas presented his clerk, one Richard de Trowelle by name, who, on his presentation, was admitted, &c. From Thomas the four acres

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poet estre seisi dune avoweson saunz presenter, et [de] ceo faire doun saunz presenter; et mesqe issint fuit qe A. G. presenta, si ceo fuit devant le temps le Roi Richard, nous ne pooms de cel presentement prendre title en cest bref de possession; par quei pur le Roi prioms bref al Evesqe.—*Ric.* Vous veiez bien coment il suppose qe A. G. dona lavoweson al Abbe, et nad pas done noun de baptisme al Abbe qe prist estat par le doun; et auxi ad il dit en sa demoustraunce qe T., general procuratour le dit Abbe, presenta a mesme leglise, et nad pas done noun de baptisme a cesti Abbe, qi procuratour, &c.; par quei demandoms jugement.—*Et non allocatur.*—*Rich.* Uncore dioms qil y ad un T. de M. de E. [et] un T. de M. de F., et prioms qil declare en certain le quel de eux presenta come procuratour Labbe de L.—*Sch.* Non fra, car il dit qe T. de M. fuit assigne par les lettres Labbe de presenter a cele eglise et as autres eglises, &c.; et par taunt il ad assez declare le quel de eux presenta.—*Rich.*¹ Nous fessoms protestacion qe ne conusoms pas la seisine A. G. de mesme lavoweson, ne qe lavoweson est seisi en main le Roi; mes dioms qe cesti W. R., apres qi mort le Roy suppose leglise estre voide, ne fuit pas presente par Th. de Multon, come general procuratour Labbe de L., auxi come le Roy suppose; prest, &c.² Et, pur aver bref al Evesqe, nous dioms qe Thomas de Multon, de Fraunketone, fuit seisi de iiij acres de pree, a quei lavoweson, &c., en temps le Roy H., a quel temps leglise se voida, par quei le dit Thomas presenta un son clerk Richard de Trowelle par noun, le quel a son presentement, &c. De Thomas descendirent les iiij acres,

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¹ This speech of *Richemund's* represents the plea as found on the roll immediately after the declaration.

² The words of the record are: "Et hoc paratus est verificare," &c., followed by "Et pro brevi habendo Episcopo dicit."

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1342-3. to which, &c., descended to one Thomas as to son and heir. And from Thomas he made the descent to one Thomas, who was under age, and in the wardship of Thomas de Multon, of Egremont, at which time the church became void; wherefore Thomas de Multon of Egremont, as guardian, presented Walter de Raytheby, who, on his presentation, was admitted, &c., by whose death the church is now void. And he said that Thomas de Multon, of Fraunketon, at his full age, granted the four acres of meadow to which, &c., to one Thomas Pecche to hold of him for term of his life, which Thomas Pecche granted to Henry Hillary all his estate in the four acres, and in the advowson, and so it belongs to Henry to present. And he prayed a writ to the Bishop, and made *profert* of the Bishop's letters witnessing the presentation as Thomas's guardian.—*R. Thorpe*. You

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a qi, &c., a un Thomas come a fitz et heire. Et de Thomas¹ fist la descente a un Thomas qe fuit deinz age, et en la garde T. de M. de Egremont,¹ a quel temps leglise se voida; par quei T. come gardein presenta Walter de Raytheby, le quel, a son presentement, &c., par qi mort leglise est ore voide. Et dit qe Thomas de Multon de Fraunketone, a son plein age, graunta les iiij acres de pree, a quei, &c., a un T. Peche,² a tener de luy a terme de sa vie, le quel T. Peche luy graunta tout son estat de les iiij acres, et de lavoweson, et issint appent a luy de presenter. Et pria bref al Evesqe, et mist avaunt les lettres Levesqe queux tesmoignent le presentement come gardein Thomas.³—*R. Thorpe.*⁴ Vous

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¹ The words from Thomas to Egremont are represented in the record as follows:—"De ipso
"Thoma cuidam Alano ut filio et
"heredi, &c., de ipso Alano cuidam
"Thomæ ut filio et heredi, &c.,
"qui quidem Thomas fuit infra
"statem, cujus corpus et prædictæ
"quatuor acræ terræ ad quas ad-
"vocatio, &c., fuerunt in custodia
"Johannæ quæ fuit uxor Alani de
"Multone, quo tempore ecclesia
"prædicta vacavit per mortem
"prædicti Ricardi, quæ quidem
"Johanna ut in jure ipsius heredis
"ad eandem ecclesiam præsentavit
"quendam Thomam Gunneys
"clericum suum Et de
"ipso Thoma de Multone de
"Fraunketone descenderunt præ-
"dictæ quatuor acræ terræ . . .
"cuidam Thomæ ut filio et heredi,
"&c., qui quidem Thomas fuit
"infra statem, cujus corpus simul
"cum prædictis quatuor acris terræ
" . . . fuerunt in custodia Thomæ
"de Multone de Egremount."

² According to the record to Thomas Pecche, knight, and

William Hardy, citizen of Lincoln, who conveyed their estate to the defendant Henry Hillary.

³ The letters are set out in the record and show on the authority of the Bishop's Registers "quod
"Thomas de Gunneys capellanus
"admissus extitit ad ecclesiam
"Sancti Petri de Somercotes, tunc
"vacantem, ad præsentationem
"Johannæ quæ fuit uxor Alani de
"Multone, custodis terræ et heredis
"ejusdem Alani Item
"Walterus de Ratheby accolitus
"ad eandem ecclesiam de Somer-
"cotes vacantem per mortem
"Thomæ Gunneys ad præsentationem
"domini Thomæ de Multone domini de Egremounte,
"ratione custodiæ terrarum Thomæ
"filii Thomæ de Multone de
"Fraunketone in minori ætate
"constituti admissus
"fuit."

⁴ Thorpe's speech represents (though somewhat abridged) the replication which follows the plea upon the roll.

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see plainly how he has not denied that the advowson is seized into the King's hand, which would be sufficient title for the King, without counting of any presentation; nor have they denied that Thomas de Multon presented; nor have they denied that this Thomas was the general procurator of the Abbot, &c. But as to their statement that he did not present as general procurator of the Abbot, since they do not show any other right in the person of Thomas de Multon by which he could present otherwise than because he was the said Abbot's procurator, and therefore it does not lie in their mouth to say that he did not present as general procurator, &c., we therefore pray a writ to the Bishop.—SHARDELOWE. When the King took his title to present, by reason of a seizure, in another's right, it was necessary that he should count of the seisin of some one who did present; therefore, when he counts of this presentation, it is necessary that the party should have his answer to it. And the party has now answered as to this presentation, and you do not maintain it; wherefore he ought to have a writ to the Bishop.—*W. Thorpe.* Sir, as to your statement that the King has seized the advowson in another's right, when, Sir, the King has seized because they are aliens, no judgment in the world can be a judgment as to the cause of that seizure, and consequently no one can judge in whose right the King has seized. And as to your statement that one shall have an answer to the King's presentation, I say, Sir, that he shall not; for in many cases, although the action were between other persons, if the plaintiff counted of his presentation, the defendant would not have an answer to it; as, for instance, in case I bring a *Quare impedit*, and count that John Stouford was seised of the same advowson, and presented, and I say that I recovered the same advowson against John Stouford by writ of Right, and so it belongs to me to present, the defendant shall never have an issue on

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veiez bien coment il nad pas dedit qe lavoweson est seisi en main le Roi, quel serreit sufficient title pur le Roi saunz counter de nul presentement; ne ils nount dedit qe T. le M. ne presenta; ne ils nount pas dedit qe cesti T. fuit le general procuratour Labbe, &c. Mes a ceo qils diount qil ne presenta come general procuratour Labbe, del houre qils ne moustrent nul autre dreit en la persone T. de M. par quei il puit presenter forsque par taunt qil fuit procuratour le dit Abbe, et par taunt ne gist pas en lour bouche a dire qil ne presenta pas come general procuratour, &c., par quei prioms bref al Evesqe.—SCHARD. Quant le Roi prist son title de presenter, par la cause dun seisiier, en autri dreit, il covient qil counte dascuni seisine qe presenta; donques, quant il counte de cel presentement, il covient qe a ceo la partie eit son respons, &c. Et a cel presentement la partie ad ore respondu, quel vous ne maintenes pas; par quei il deit aver bref al Evesqe.—W. Thorpe. Sire, quant a ceo qe vous parles qe le Roi ad seisi lavoweson en autri dreit, Sire, quant le Roi ad seisi par cause qe ils sont aliens, nul jugement de mounde purra juger la cause de ceo seisiier, et *per consequens* nul homme poet juger en qi dreit le Roi ad seisi. Et quant a ceo qe vous dites qe homme avera respons al presentement le Roi, Sire, jeo die qe non; car *in multis casibus*, mesqe il fuit entre autres persones, si le pleintif counta de son presentement, le defendant navera pas respons a ceo; come en cas jeo porte un *Quare impedit*, et counte qe Johan Stouford fuit seisi de mesme lavoweson, et presenta, et jeo die qe jeo recoveri mesme lavoweson vers Johan Stouford par bref de Dreit, issint appent a neoz de presenter, jammes navera le defendant issue sur

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the presentation by John Stouford; no more here.—*Rokele.* Sir, we shall have an answer to the presentation of which you have counted; for suppose you have said against us that this Walter de Raytheby, from whose presentation you take your title, was presented by the Abbot of L. and was admitted on his presentation, &c., we shall have, Sir, a good traverse to say that this Walter de Raytheby was not admitted nor instituted by the Bishop on the presentation of the Abbot; therefore it seems that we shall have the same answer in this case, when you say that this Walter de Raytheby was presented by the Abbot's general procurator.—*W. Thorpe.* You do not take such an answer here, but you say that the said Thomas did not present as the general procurator of the Abbot, without denying that he presented, though it was by a title other than we suppose by our count, and you do not show any other title in his person by virtue of which he could present; wherefore it seems that you do not at all answer to our count.—*Pole.* As to your statement that we do not deny that Thomas de Multon presented, that cannot be held as not denied by us: for, even though we were willing to say that Thomas did not present, that alone could not make a plea to issue, because it would be necessary for us to take an issue which could be warranted by your count, to wit, to say that, whereas you say in counting that Thomas presented as general procurator of the Abbot, he did not present as general procurator of the Abbot, and that issue we have taken, and therefore it seems that the rest cannot be not denied by us.—*PARNING, ad idem.* You take your title for the King by reason that the advowson is seized into the King's hand, as parcel of the possessions of the Abbot, &c. And you do not show in the person of the Abbot any other possession by presentation but that which they have destroyed by averment; and also the estate which the

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le presentement Johan Stouford; nient plus icy.—

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Rok. Sire, nous averoms respons al presentement de quei vous avez counte; car jeo pose qe vous avez dit encountre nous qe cesti W. R., de qi presentement vous pernez vostre title, fuit presente par Labbe de L., et a son presentement fuit resceu, &c., Sire, nous averoms bon travers a dire qe cesti W. R. ne fuit pas resceu ne institut del Evesqe al presentement Labbe; par taunt semble qe mesme le respons averoms nous cy, quant vous dites qe cesti W. R. fuit presente par le general procuratour Labbe.—*W. Thorpe.* Vous ne pernez pas tiel respons cy, einz vous dites qe le dit T. ne presenta pas come general procuratour Labbe nient dedient qil ne presenta mye, ceo fuit par autre title qe nous ne supposoms par nostre counte, et autre title vous ne moustrez pas en sa persone, par quei il puit presenter; par quei il semble qe vous ne responez rienz a nostre counte.—*Pole.* Quant a ceo qe vous dites qe nous ne dedioms pas qe T. de M. presenta, ceo ne poet pas estre tenu a nient dedit de nous: car mesqe nous voudroms dire qe T. ne presenta, ceo soulement ne puit pas faire issue de plee, car nous coviendreit prendre issue quel puit estre garraunti de vostre counte, saver, a dire qe, ou vous dites en countant qe T. presenta come general procuratour Labbe, qil ne presenta pas come general procuratour Labbe, et cest issue avoms pris, et par taunt il semble qe le remenant ne purra pas estre a nient dedit de nous.—*PARNING, ad idem.* Vous pernez vostre title pur le Roi par cause qe lavoweson est seisie en main le Roi, come parcele de possessions Labbe. Et en la persone Labbe vous ne moustrez autre possession par presentement forsqe cele qils ont destruit par averement; et

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Abbot had was by the feoffment of Aleyn Gymel, in whose person you do not allege any presentation; wherefore, even if this advowson was in the possession of the Abbot, he cannot maintain the *Quare impedit* against that which they have said, because he cannot show any presentation in his own person, nor in the person of any of those through whom he claims. And since the Abbot could not have a *Quare impedit*, consequently the King, who claims by reason of the possession of the said Abbot, cannot have it. And as to what you have said that the seizure of the advowson into the King's hand by the Escheator is a title for the King without presentation, until the advowson be sued out of the King's hand by Petition, Sir, in some cases it is so, and in others not: for when the King commands his Escheator or his Sheriff to seize such an advowson into his hand by express words, in such case the seizure shall be the King's title without anything more; but in case the King commands to seize the possessions of a certain person, without mentioning any particular thing, in such case the seizure cannot be a title for the King, unless he can show that the thing seized was in the possession of the person whose possessions the King had given command to seize. Now you are in the same case; wherefore, &c.—*W. Thorpe*. You are relying now on the fact that we do not show this advowson to be one of the possessions of the Abbot of L., inasmuch as we do not show that his feoffor presented. Sir, it is possible that his feoffor presented before the time of memory, from which we cannot take title in this possessory writ; wherefore, &c.—*SHARSHULLE*. Sir, even though his feoffor did present before time of memory, you shall have a good count to say that he presented since the time of memory, because a party cannot take issue

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auxi lestat qe Labbe avoit par le feffement A. G., en qi persone vous alleggez nul presentement; par quei, mesqe cel avoweson fuit en la possession Labbe, il ne poet pas maintenir le *Quare impedit* encountre ceo qils ount dit, pur ceo qil ne poet moustrer nul presentement en son persone demene, nen la persone nul de ceux par qi il cleyme. Et quant Labbe ne puit pas aver *Quare impedit, per consequens* le Roi, qe cleime par cause de possession le dit Abbe ne poet le aver. Et quant a ceo qe vous aves parle qe le seisiier de lavoweson en la main le Roy par Leschetour est tite al Roy saunz presenter, tanqe il soit suy hors de main le Roy par Peticion, Sire, en cas il est issint et en cas nemye: car quant le Roy maunde a son Eschetour, ou a son Vicounte, de seisiier un tiel avoweson en son main par expres paroles, en tiel cas le seisiier serra tite le Roy saunz plus; mes en cas qe le Roy maunde de seisiier les possessions une certeine persone, saunz parler de nule certeine chose, en tiel cas le seisiier ne poet pas estre tite al Roi, si non qil poet moustrer qe la chose seisie fuit en la possession cesty qi possessions le Roi avoit maunde de seisiier. Ore vous estes en mesme le cas; par quei, &c.—*W. Thorpe*. Vous reliez ore sur ceo qe nous ne moustroms pas ceste avoweson estre une des possessions Labbe de L., en taunt qe nous ne moustroms pas qe son feffour presenta. Sire, poet estre qe son feffour presenta devant le temps de memorie, de quei nous ne poioms prendre tite en cest bref de possession; par quei, &c.—*SCHAR*. Sire, mesqe son feffour presenta avaunt temps de memorie, vous aurez un bon count a dire qil presenta puis le temps de memorie, car sur le temps de presentement la partie ne

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A.D. 1342-3. on the time of presentation; wherefore, &c.—But afterwards he had the averment, &c.

Annuity
of a rent
and of
robes in
arrear.
And
observe
that he did
not count
that he
was seised,
&c.

(35.) § *Grene* counted for Hugh de Walmesforde
against the Abbot of Croyland that tortiously he detained

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purra mie prendre issue; par quei, &c.—Mes apres A.D.
il avoit laverement, &c.¹ 1342-3.

(35.)² § *Grene counta* pur Hugh de Walmesforde Annuite
vers Labbe de Croyland⁴ qe a tort luy detient de rente
et de robes
arere. Et
vide qil ne
counta
mye qil
fuit
seisi, &c.³

¹ After the replication the record continues as follows:—"Et Henricus dicit quod dominus Rex in demonstratione sua capit titulum suum presentandi solummodo videlicet quod predictus Thomas de Multone presentavit ad ecclesiam predictam predictum Walterum de Raytheby, tanquam generalis procurator Abbatis de Langonete qui tunc fuit, ut in jure ipsius Abbatis, ad quod idem Henricus sufficienter respondit, videlicet quod idem Walterus non fuit admissus et institutus ad presentationem predicti Thomae tanquam generalis procuratoris ipsius Abbatis, ut in jure ipsius Abbatis, et hoc verificare superius pretendebat, &c.; quae quidem verificatio est expresse in contrarium actionis domini Regis, &c., quam verificationem, &c., idem dominus Rex non admittit, &c., nec titulum suum predictum manutinet, &c., unde petit iudicium, ex quo ipse seiscitus est de terra predicta ad quam advocatio predicta pertinet, prout ipse superius allegavit, si per aliquod seisire in manum domini Regis per predictos Vicecomitem et Escaetorem in Cancellaria testificatum, quod de jure non est intelligendum cum idem Henricus seiscitus sit de terra predicta ad quam, &c., et de qua quidem seisina per predictos Vicecomitem et Escaetorem testificata ipse cognitionem habere non potest

"nec debet, ad ipsum ad ecclesiam predictam ad praesens non pertinet presentare. Et petit breve Episcopo, &c.

"Et Johannes [de Clone] qui sequitur [pro domino Rege] dicit quod predictus Walterus de Raytheby fuit admissus et institutus ad ecclesiam predictam ad presentationem predicti Thomae de Multone tanquam generalis procuratoris Abbatis de Langonete qui tunc fuit, ut in jure ipsius Abbatis, prout dominus Rex per demonstrationem suam supponit, et hoc petit quod inquiratur per patriam."

Upon this issue was joined. The King's Attorney afterwards failed to appear.

"Ideo predictus Henricus ad praesens habeat breve Episcopo . . . quod ad presentationem predicti Henrici ad predictam ecclesiam idoneam personam admittat, salvo jure Regis cum alias inde loqui voluerit."

² From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Hil. 17 Edw. III., R^o 272. The claim was for £95 and 12 robes, arrears of an annuity of 100 shillings and one robe *per annum*.

³ The words of the marginal note subsequent to Annuite are from 25,184 alone.

⁴ L., Croiland; the other MSS. of Y.B., Crouland.

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from Hugh £95 of an annual rent of 100*s.* and one robe, &c.—*Gaynesford*. He has not counted that he was seised in such a manner but that it may be understood that the whole is in arrear since the execution of the deed¹ until the purchase of the writ; and between the two times there would be more by one term, to wit 50*s.*, in arrear than he has counted; so he has counted at variance with the specialty; judgment of the count.—*Blaykeston*. The effect of that is to discharge you, and it is possible that I have received or perchance released the 50*s.*—*Thorpe*. You must always be in accordance with the specialty. And suppose you are bound to me in £20, whereof I have received a moiety, if I please, I shall have a writ to demand the whole in accordance with the specialty, although I have received a moiety, or to demand the moiety, at my pleasure. And, if I demand the moiety, I must count that you were bound in the whole sum according to the specialty, and that I have received the moiety, and so be in accordance with the specialty, or else my count will abate; so also in this behalf.—Afterwards *Gaynesford* pleaded over: you see plainly how the specialty purports until he should be advanced to a benefice of Holy Church; we tell you that we tendered to him a presentation to the church of West Keal, which is of our patronage, on a certain day, &c., at which time the church was void, which presentation he refused,

¹ According to the roll the deed was alleged to have been executed in the year 16 Edward II.

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lxxxv¹ li. dun annuel rent de cs. et une¹ robe, &c.—*Gayn.* Il nad pas counte qil fut seisi² issint qe homme ne poet entendre mes qe tut soit arere puis la confeccion del escript³ tanqe al bref purchace; et entre les deux temps si avereit il plus par un terme saver Ls. arere qil nad counte; issint il ad counte⁴ variant del⁵ especialte; jugement du counte.—*Blaik.* Cest en descharge de vous, et poet estre qe jeo lay resceu ou par cas relese.—*Thorpe.* Vous devez touz jours acorder a lespecialte. Et jeo pose qe vous moi⁶ soiez oblige en xxli., dount jay resceu⁷ la moite, [si jeo voille, jeo averai bref a demander lentier, solonc lespecialte, ovesqe jay resceu la moite, ou demander⁸ la moite]⁹ a ma volunte. Et si jeo demande la moite, il moi covient counter qe vous estoiez oblige en lentier solonc lespecialte, et qe jay resceu la moite, issint acordaunt al especialte, ou mon counte abatera; auxi de ceste part.—Puis *Gayn.* dit outre: vous veiez bien coment lespecialte voet tanqil fut avaunce a benefice de Seynt Eglise,¹⁰ &c.; nous vous dioms qe nous luy tendimes presentement al eglise de W. qe est de nostre patronage, certain jour, &c., a quel temps leglise fut voide, quel presentement il refusa, issint

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¹ The numbers are from the roll. They are not accurately given in any of the MSS. of Y.B.

² According to the record the following words were in the declaration:—"de qua quidem roba
" idem Hugo seisitus fuit usque
" jam duodecim annis elapsis ante
" diem impetrationis brevis . . .
" et de prædictis centum solidis
" usque jam decem et novem annis
" ante prædictum diem impetra-
" tionis brevis."

³ L., and Harl., du fait, instead of del escript.

⁴ The words issint il ad counte are omitted from Harl.

⁵ L., al.

⁶ Harl., and 25,184, me.

⁷ resceu is omitted from Harl. and 25,184.

⁸ The words solonc lespecialte, ovesqe jay resceu la moite, ou demander are from Harl. alone. In other MSS. the word ou is substituted.

⁹ The words between brackets are omitted from L.

¹⁰ The words de Seynt Eglise are from L. alone.

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and so the annuity is extinct; judgment.—*Blaykeston*. We tell you that this church was litigious (and he showed how another person raised a dispute about it at that time), and also we were, at the same time advanced to a benefice, for which reason we would not accept the presentation; judgment whether you can extinguish the annuity by such a refusal.—*Quære* concerning this matter of litigiousness.—Afterwards *Blaykeston* said that he did not refuse; ready, &c.—And the other side said the contrary.

Note as to
lands
seized into
the King's
hand by
reason of
idiotcy.

(36.) § Note that certain lands were seized into the King's hand by reason of idiotcy, and thereupon there came another person into the Chancery, and said that the ancestor of the person who is an idiot enfeofed him, *absque hoc* that the land

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lannuite esteinte¹; jugement.²—*Blaik*. Nous vous dioms qe ceste eglise fut litigieuse, et moustra coment un autre mist debat adonques, et auxi nous fumes a mesme le temps avance, par quei nous ne voloms³ pas resceivere; jugement si par tiel refuser puissez lannuite esteindre.⁴—*Quere de ista materia* de litigiousete.⁵—Puis *Blaik*. dit qil ne refusa pas; prest, &c.—*Et alii e contra*.⁶

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(36.)⁷ § *Nota* qe certains terres furent seisis en la meyn le Roi par cause de idiocie,⁸ et sur ceo vint¹⁰ un autre en la Chauncellerie, et dit qe launcestre celuy qest idiot luy enfeffa, sanz ceo qe

Nota de
terres
seisis en
la mayne
le Roi par
cause de
idiotye.⁸

¹ L., atteynt.

² The allegation in the Abbot's plea was, according to the record, that he, on a stated day, in the reign of the existing King, "apud Croyland obtulit ipsi Hugoni quendam presentationem ad ecclesiam de Westerkele tunc vacantem sigillo communi ipsorum Abbatis et Conventus consignatam, quam quidem ecclesia est de patronatu ipsius Abbatis, &c., et extenditur per annum ad quadraginta marcas, et valet per annum, secundum verum valorem, centum marcas, quam quidem presentationem idem Hugo ibidem recepit, et postea eandem presentationem reportavit, et ipsi Abbati ibidem retradidit, et dixit quod ipse habuit quendam aliam, videlicet ecclesiam de Wybertone, majoris valoris quam sit ecclesia predicta, per quod ipse ecclesiam predictam admittere noluit, et sic actio ipsius Hugonis omnino extincta, et idem Abbas de predicto annuo reddito omnino

"exoneratus, unde petit iudicium si actionem versus eum habere debeat," &c.

³ 22,552, volioms.

⁴ L., atteyndre.

⁵ Harl., litigiousete; the words de litigiousete are omitted from 22,552.

⁶ The word *gratis* is added after *contra* in 22,552, and 25,184. Nothing appears on the roll as to the church being "litigious." The plaintiff's replication was "quod, cum predictus Abbas supponit ipsum recepisse . . . predictam litteram presentationis ei factam ad predictam ecclesiam de Westerkele, ipse Hugo non recepit litteram istam sicut predictus Abbas ei imponit." It was on this replication that issue was joined.

⁷ From the four MSS. as above.

⁸ The marginal note, except the word *Nota*, is from 25,184 alone.

⁹ L., idioci; 22,552, ydiotie; 25,184, ydiosye.

¹⁰ L., sourvynt, instead of sur ceo vint.

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descended to the idiot in accordance with that which the Inquest of Office had found for the King. And upon this they were adjourned into the King's Bench. —[*W.*] *Thorpe*. You see plainly how the lands are in the King's hand, and are so to remain for the life of the idiot; wherefore we do not understand that you can do anything without suing a Petition to the King. —*R. Thorpe*. When the King is seised only in right of another, and in respect of that tenancy, even if he were another person, a *Præcipe quod reddat* would not lie against him, one shall not sue by Petition, which is in lieu of an Original Writ against another person, but it is sufficient to traverse the Office which is found for the King. Now it is certain in this case that the King has not and ought not to have the freehold, but the idiot shall have it and has it, and against him a *Præcipe* would lie.—[*W.*] *Thorpe*. Be it one or the other, the King shall not be ousted without Petition sued to him.—They were adjourned.

*Quare
impedit* for
two men
and the
wife of one
of them,
which wife

(37.) § John Segrave, and Juliana his wife, and Michael Ponynges brought a *Quare impedit* against several persons,¹ in which it was pleaded to issue, and afterwards it was alleged that Juliana the wife of John Segrave was dead, and that so the writ was abated. The plaintiff could not deny

¹ The translation follows the text | brought against the Abbot of St. of the report, but the action was | Augustine, Canterbury, alone.

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la terre descendi al idiote¹ solonc ceo qe lenqueste doffice avoit chaunte pur le Roi.² Et sur ceo furent ajournes en Baunk le Roi.—[W.] *Thorpe*. Vous veiez bien coment les terres sont en la meyn le Roi, et sont a demurer pur la vie le sote³; par-quei sanz Peticion suyr au Roi nentendoms pas qe vous poiez rien faire.—*R. Thorpe*. Quant le Roi est seisi forsque en autri dreit, de quel tenaunce, tout fut il autre persone, *Præcipe quod reddat* ne girreit pas⁴ vers luy, homme suyr pas⁵ par Peticion, qest en lieu doriginal vers autre persone, mes suffit de traverser office qe trove est pur luy. Ore certain est en ceo cas qe le Roi nad pas ne deit aver le fraunc tenement, mes avera et ad le idiote, et vers luy girreit *Præcipe*⁶; par quei, &c.⁷—[W.] *Thorpe*. Soit il lun ou lautre, le Roi ne serra pas oste sanz Peticion suy a luy.—*Adjornantur*.

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(37.).⁸ § Johan Segrave, et J. sa femme, et Michel Ponynge porterent *Quare impedit* vers plusours, ou plede fut al enqueste,⁹ et puis fut allegge qe J. la femme Johan Segrave est mort, issint le bref abatu. Le pleintif ne puit ceo dedire, mes dit qe par taunt

Quare impedit
pur deux
hommes
et la
femme
lun, quele
femme,

¹ L., and Harl., luy descendi, instead of descendi al idiote.

² The words pur le Roi are omitted from L. and Harl.

³ L., and Harl., sotte.

⁴ 25,184, girroit, instead of ne girreit pas.

⁵ pas is omitted from L.

⁶ The words vers luy girreit *Præcipe* are omitted from L.

⁷ The words par quei, &c., are omitted from 25,184.

⁸ From the four MSS., as above, but corrected by the record, *Placita de Banco*, Hil. 17 Edw. III., R^o 303. It there appears that the action was brought by Michael de Ponyn-

ges, John de Segrave and Juliana, his wife, and several others, against the Abbot of St. Augustine, Canterbury, in respect of a presentation to the church of Tenterden.

⁹ Harl., Evesqe. It is not stated in the roll of this Term that the parties pleaded to issue, but only that all the parties except Juliana appeared. "Et iidem Michael, "Johannes," [and the other plaintiffs] "dicunt quod eadem Juliana "mortua est. Et prædictus Abbas "non potest hoc dedicere. Ideo "dictum est eidem Abbati quod "eat inde sine die," &c.

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died pending the writ. The husband showed how he had ground to hold by the curtesy of England. Notwithstanding this, the whole writ abated.

Dower. (38.) § The Earl of Angus was vouched, and he, as tenant by his warranty, vouched himself and John Bulmere as cousins and heirs of William de Kyne, and showed cause. Process was continued against the vouchees until the *Cape ad valentiam* against the Earl was returned now. And he answered by attorney in his capacity of vouchee. And the *Sequatur suo periculo* against John is returnable now, and no writ is returned; and the tenant by his warranty, who vouched,

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son bref ne dust³ abatre, qar a ceo bref owelment
sount les pleintifs et les defendants actours, et si
un des defendants fut mort le bref esterreit vers les
autres, *per consequens* mesqe un des pleintifs fut
mort. Et alleggea outre coment il avoit issue entre
Segrave et sa femme, issint qil avoit cause a tener
par la ley Dengleterre. Et alleggea le cas de
Hanlowe,⁴ ou un defendant morust, et, *non obstante*,
le bref fut agarde bon.—Et par COURT⁴ il fut re-
spondu, mesqe un defendant morust, nest pas
merveille, qar cest un bref de Trespas, ou par mort
dun defendant le bref nabatera pas vers les autres,
mes par mort un des pleintifs tout est a terre.⁵—
Par quei par agarde⁶ ceo bref abatist.⁷

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pendant le
bref,
morust.
Le baroun
mustra
coment il
ad cause a
tener par
ley
Dengle-
terre. *Hoc
non
obstante*,
tut le bref
abati.¹
[Fitz.,
Briefe,
665.]

(38.)⁸ § Le Counte Danguse⁹ fut vouche et, come
tenant par sa garrantie, il voucha luy mesme et
Johan Bulmere come cosyns¹⁰ et heires William de
Kyme, et moustra cause. Proces continue vers les
vouches tanqe¹¹ le *Cape ad valentiam* fut retourne
vers le Counte a ore. [Et il respondi par attourne
la ou il est vouche. Et le *Sequatur suo periculo* est
ore retournable sur Johan, et nul bref est re-
tourne]¹²; et le tenant par sa garrantie qe voucha

¹ The marginal note, except the words *Quare impedit* is from 25,184 alone.

² L., deit.

³ Harl., Hawelowe; 22,552, Harlowe.

⁴ L., SCHAR.

⁵ 25,184, altre, instead of a terre.

⁶ The words par agarde are omitted from L.

⁷ L., and 25,184, abatera.

⁸ From the four MSS., as above, but corrected by the record, *Placita de Banco* Hil. 17 Edw. III., R^o

415, d. It there appears that the action was brought by Nicholas de Cantilupo and Joan his wife against Simon Tochet, who vouched Gilbert de Umframville, Earl of Angus. He warranted and vouched over himself and John de Bulmere as cousins and heirs of William de Kyme.

⁹ Harl., Dangos.

¹⁰ L., coseyns.

¹¹ All the MSS. except L., qe.

¹² The words between brackets are omitted from L.

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is essoined. The demandant prayed seisin of a moiety on the ground that the vouchee has not sued against one of the warrantors. And because the vouchee is essoined, and the esoin lies, and he shall not be a loser in his absence, they were adjourned, and *Idem dies* was given, &c. Look to the process on voucher between the same parties,¹ in Michaelmas Term next above.

*Scire
facias.*
See the be-
ginning in
Michael-
mas Term
next,
above.

(39.) § *Stouford*, as above, alleged that, since the judgment to recover to the value was in respect of fee simple, as appears by the record upon which the writ of *Scire facias* is founded, this writ ought not to be maintained by any extraneous plea, but solely by the record, from which it varies, for this writ cannot be maintained by law; but if the law should allow him, on such a fact as he alleges, to have execution, it would be on a writ maintained and in accordance with the record, and he would then aid himself by such matter from without.—SHARSHULLE. That cannot be, because his writ would oust him from execution in respect of such a thing descended; and I say positively that this writ is not at variance with the record, for as to the names of the parties, and the quantity of the land, and the name of the vill, it is sufficiently in accordance; and even though it be the fact that the writ is not wholly in accordance with the words of the judgment in virtue of its language, yet if the effect of the judgment be contained in

¹ See Y.B. M., 16 Edw. III., No. 67. The demandants were the same, and the Earl of Angus and John de Bulmere were vouched, but the tenants were not the same.

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[est essone. Le demandant pria seisine de la moite desicome le vouche nad pas suy vers lun¹ garrant. Et pur ceo qe le vouche]² est essone, et lessone gist, et il ne serra pas perdant³ en sabsence, ils furent ajournes, et *Idem dies* done, &c.⁴—*Quære* proces sur voucher⁵ entre mesmes les parties, *supra Michaelis proximo*.

A.D.
1342-3.

(39.)⁶ § *Stouf.*, *ut supra*, alleggea qe quant le *Scire facias*. jugement de⁸ recoverir a la value fut de fee simple, *Vide prin* come piert par le recorde, de quei il est,⁹ qe ceo *cipium supra* bref de *Scire facias* qe ne deit pas estre meintenu *Michaelis proximo.*¹ par foreyn plee, mes soulement par le recorde, de [Fitz., *Recovere en value*, 19.] quei il est variant, qar ceo bref par ley ne poet estre meyntenu; mes si ley luy durreit¹⁰ sur cel fait come il alleggea qil avereit execucion, ceo serreit sur bref meyntenu et acordaunt al recorde, et il se eidereit par tiel matere dehors.—SCHAR. Ceo ne poet estre, qar son bref luy oustereit dexecucion de tiele chose descendue; et jeo die bien¹¹ qe ceo bref nest pas variant del recorde, qar quant en nouns des parties et la quantite de la terre, et de la ville¹² cest assetz acordaunt; et tut soit il qa la parole de jugement *de virtute sermonis* le bref sacorde pas en tut al recorde, si leffecte del jugement soit compris

¹ 25,184, lour.

² The words between brackets are omitted from L.

L., taunt.

⁴ The points mentioned in the report do not appear in the roll, according to which both vouches made default after essoin. Then the *Cape ad valentiam* was awarded, *Alias* and *Pluries*. Nothing further is shown.

⁵ L., and Harl., mesme le voucher.

⁶ From the four MSS., as above. The report is in continuation of

Y.B. M., 16 Edw. III., No. 88, the record being apparently *Placita de Banco*, Mich. 16 Edw. III., R^o 640, d.

⁷ The marginal note subsequent to the words *Scire facias* is from 25,184 alone.

⁸ The words jugement de are omitted from L.

⁹ The words de quei il est are from 25,184 alone.

¹⁰ L., dirroit.

¹¹ bien is from L. alone.

¹² L., value.

No. 39.

A.D. 1342-3. its matter, that is sufficient. Now the effect of the judgment was only to except fee tail descended, which shall never be made over to the value, though every other thing descended shall be. And for the very same reason that this thing should be made over to the value at the time of the giving of judgment, it should be also, if it has descended since.—HILLARY. If he had had this thing at the time of the judgment, he would have made it over to the value by special judgment, not as being fee simple, but on the special matter; but now there is no judgment which can warrant this execution.—SHARSHULLE. Suppose execution had been sued after judgment had been given without qualification, and the Sheriff had returned that he had only so much rent, would not that have been then made over to the value?—HILLARY. Yes, by a second judgment.—SHARSHULLE. Certainly not, because all executions shall be warranted by the first judgment.—*Thorpe*. If I have deraigned warranty against an heir by the deed of his ancestor, and he has nothing by descent except rent issuing from land of which, perchance, I am myself tenant, and I have judgment against him to recover to the value, and the Sheriff return that he has nothing but that rent, that shall be retained in my hand in lieu of the value because I cannot recover it; so also in this case. Besides, if my ancestor gave in tail, yielding to him a certain rent, I, as heir, shall make over to the value, in accordance with that judgment, that rent descended, although it be not fee simple.—HILLARY. Such rent is fee simple.—*Thorpe*. Certainly not, because neither the donor nor his heirs have any higher estate in the rent than the tenant has in the land, and the heir shall not have a Mort d'Ancestor in respect of such rent.

No. 39.

deinz la matere, ceo suffit. Ore leffecte du jugement fut forsque a forprendre fee taille descendu, quel ne serra pas fait en value, mes chescun autre chose descendue serra. Et par mesme la resoun [qe ceste chose serreit faite en value al temps de jugement rendu par mesme la resoun]¹ si ceo soit descendu puis.—HILL. Si al temps del jugement il ust eu ceste chose, &c., il ust fait ceo en value par especial jugement, noun pas come de fee simple, mes sur la matere especial; mes ore ny ad pas jugement qe purra garrantir ceste execucion.—SCHAR. Jeo pose qapres lagarde fait simplement il ust suy execucion, et le Vicounte ust retourne qil nust eu forsque tiel rente, nust ceo este fait en value adonques?—HILL. Oyl, par un seconde jugement.—SCHAR. Nanil certes, qar toutes les execucions serrount garranties del primer jugement.—Thorpe. Si jay desrene garrantie vers un heir par le fait soun auncestre, et il nad rien par descende forsque rente issaunt de la terre dount jeo su par cas² mesme tenant, et jay jugement vers luy de recoverir a la value, le Vicounte retourne qil nad forsque cel rente,³ ceo serra estope en ma mayn en lieu de value, pur ceo qe jeo nel puisse recoverir; auxi par de cea. Ovesqe ceo, si moun auncestre dona en taille rendant a luy certain rente, jeo, come heir, fra cele rente descendu, tout ne soit ceo pas fee simple⁴ a la value par cel jugement.—HILL. Tiel rente est fee simple.—Thorpe. Nanil certes, qar le donour ne ses heirs nount plus haut estat en le rente⁵ qe le tenant en la terre, [ne le heir de⁶ tiel rente navera pas Mort dauncestre].⁷

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1342-3.

¹ The words between brackets are omitted from L.

² The words par cas are omitted from Harl.

³ L., la rent avant dit, instead of cele rente.

⁴ L., il fee taille, instead of ceo pas fee simple.

⁵ 22,552, terre.

⁶ L., en.

⁷ The words between brackets are omitted from 22,552.

No. 40.

A.D.
1842-3.

—*Gaynesford*. A woman shall not have dower of a rent which is to continue only for the life of another, nor should a woman who was demandant in Dower, even though the heir of her husband was vouched and had had such rent at that time. By law she ought not to have been compelled to take that for her dower, because her dower shall be certain, to continue for her life, and this is uncertain; why then any more shall this be made over to the value?—*SHARSHULLE*. Because he can have it at his peril; and it is more reasonable that he should be first served who has warranty and a higher right by the deed of the ancestor than that by which the heir holds by descent, which is a lower title.—*Grene*. If you maintain the execution you will award ten executions on one judgment; for if to-day he had execution of this rent, and the tenant were to die to-morrow, you would grant him a new execution, and so on, *in infinitum*.—*SHARSHULLE*. He shall never have another execution, for he has elected to have this, at his peril.—*Quere*.—They were adjourned.¹

Quare impedit
where one
hindered
the pres-
entation
to a
Chantry
at the
altar of St.
Chad

(40.) § The defendant tortiously hinders the plaintiff, and does not suffer him to present a fit person to the chantry at the altar of Our Lady in the church of St. Chad, of Sawley, which is void.—And he counted of a seisin of the presentation, and that the presentee was admitted by the Bishop.—And the writ

¹ It appears by the record that the tenant eventually had execution, on the failure of the heir (the vouchee) to appear.

No. 40.

—*Gayn.* De rente qest a demurer¹ forsque pur autri vie la femme navera pas dowere, ne la femme qe fut demandante [en] Douwere² tut fut leir soun baroun³ vouche, et ust eu a cel temps tiel rente. Par ley ele ne dust pas aver este chace daver pris cel pur son dowere, qar son dowere serra en certain a durer pur sa vie, et cest en noun certain; par quei⁴ serra ceo plus donques fait en value?—*SCHAR.* Pur ceo qil le poet aver a soun peril; et il est plus de resoun qe celuy soit primes servy qad garrantie et dreit plus haut par le fait launcestre qe leir le teigne par descende qest title de plus bas.—*Grene.* Si vous meyntenes lexecucion vous agarderez sur un jugement x execucions: qar sil avoit huy⁵ execucion⁶ de cel rente, et demeyn le tenant fut mort, vous luy graunterez novele execucion, *et sic in infinitum*.—*SCHAR.* Jammes navera autre execucion,⁷ qar il ad eslieu ceste a son peril.—*Quære.—Adjournantur.*

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1342-3.

(40.)⁸ § A tort luy destourbe, et pas ne luy soeffre⁹ presenter covenable persone a la chaunterie al¹⁰ autere¹¹ Nostre Dame en leglise de Seint Cedde de Sallowe qe voide est.—Et counta de seisine de presentement, et qil fut resceu Devesqe.¹²—Et le bref

*Quære
impedit
presentare
ad Cantar-
iam ad
altare
Sancti
Ceadde*

¹ L., demorer.² Douwere is from L. alone.³ The words soun baroun are omitted from L. and Harl.⁴ 22,552, qoi.⁵ L., hu.⁶ L., and Harl., cele execucion.⁷ execucion is omitted from L. and Harl.⁸ From the four MSS., as above, but corrected by the record *Placita de Banco*, Hil. 17 Edw. III. R^o 293. It there appears that the action was brought by William Tenery against Jocelyn the parson and John the vicar of Sawley (Derby-

shire) and William son of Thomas de Sallowe, chaplain, in respect of a presentation to a chantry at the altar of Our Lady, in the church of St. Chad, Sawley.

⁹ The words et pas ne luy soeffre are omitted from L. and Harl.¹⁰ L., del.¹¹ Harl., autiere; 22,552, altere.¹² In the declaration the title was, according to the roll, traced from Ralph de Chaddesdene, who was seised of the advowson and presented in the time of Henry III., and whose presentee was admitted and instituted.

No. 40.

A.D.
1342-3.
in the
church of
Sawley.
Hilary
Term
above in
the 14th
year, and
Michael-
mas Term
below in
the 17th
year¹
agree.

was brought against the parson and another.—*Thorpe*. He has not shown how this chantry commenced so that, according to common intendment, a presentation could be made; judgment of the count.—*HILLARY*. If the King were a party, it would, perhaps, be necessary that he should do so, but not when the action is against you as the disturber. And suppose a vicarage were to-day established in a church by composition, would not the patron immediately have a *Quare impedit*, although it did not commence in ancient time?—*Thorpe*. No wonder: for of common right one shall present to a vicarage and to a parsonage, but patronage to present to a chantry in our church, of which we are parson and vicar, cannot of common right be demanded against us, because a chantry ought naturally to be given by us.—*STONORE*. His presentation is his title. Answer.—*Thorpe*. The words of the writ are *ad cantariam*, and it does not say *ad perpetuam cantariam*; and presentation cannot be made to a chantry, unless it be perpetual; judgment of the writ.—*HILLARY*. Will you have a writ in the words *quod permittat presentare ad perpetuam vicariam*, and so be able to allege the same reason [for abatement of a writ in respect of a vicarage?]²—as meaning to say that he could not. Therefore answer.—*Thorpe*. You see plainly this writ is not maintained by Statute nor by common law, for the Statute³ gives it in respect of Vicarage, Abbey, Priory, and other Houses; judgment.—And afterwards he passed on and said as to one of the defendants that he was chaplain of the same chantry, and claimed nothing else; and as to the parson he alleged plenarty by his own patronage for six months before the purchase of the writ.

¹ Y.B., Hil. 14 Edw. III., No. 51,
and Mich 17 Edw. III., No. 68, *bis*.

² 13 Edw. I. (Westm. 2) c. 5.

No. 40.

est porte vers la persone et un autre.—*Thorpe*. Il nad moustre coment ceste chaunterie comencea, issint qe de comune entente presentement purreit estre fait; jugement de counte.—*HILL*. Si le Roi fut partie, par cas il coviendreit qil fait, mes noun pas devers vous qestes soun destourbour. Et jeo pose qun vikere fut huy ceo jour establi par composicion en une eglise, navera le patroun tantost un *Quare impedit*, tut ne comencea ceo pas dantiquite?—*Thorpe*. Nient merveille: qar de comune dreit homme presentera a vikere et a personage, mes avowere de presenter a chaunterie en nostre eglise qe sumes persone et viker ne puit estre de comune dreit demande vers nous, qar chaunterie deit estre done naturellement par nous.²—*Sron*.³ Son presentement est son title. Respondez.—*Thorpe*. Le bref voet *ad cantariam*, et ne dit pas *ad perpetuam cantariam*; et presentement ne poet estre fait a chaunterie, si ele ne fuit perpetuele; jugement de bref.—*HILL*. Avez vous bref *quod permittat presentare ad perpetuam vicariam*,⁴ et si purrez vous faire mesme la resoun? *quasi diceret non*. Parquei respondez.—*Thorpe*. Vous veiez bien coment ceo bref nest meintenu par estatut ne par comune ley, qar lestatut le doune de Vikerie, Abbey, Priorie, et autres mesouns; jugement.—Et puis *gratis* il passa, et dit quant a lun qil est chapeleyn de mesme la chaunterie, et autre chose ne cleyne; et quant al persone il alleggea plenerte de savowere demene par vj mois avant le bref purchase.⁵

¹ The marginal note, except the words *Quare impedit*, is from 25, 184 alone.

² The words par nous are from L. alone.

³ Harl., *Gayn*.

⁴ Harl., *cantariam*.

⁵ According to the roll the pleas

were as follow:—“*Johannes dicit quod ipse est vicarius ecclesiæ prædictæ, et nihil clamat in cantaria prædicta, nec aliquam injuriam nec impedimentum ei inde fecit. Et idem Willelmus filius Thomæ dicit quod ipse est capellanus cantariæ prædictæ per prædictum*”

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1342-3.
*in ecclesia
de S.
Concor-
dant
supra
Hilarii
xiii^o et
infra
Michaelis
xvi^o.*¹

No. 41.

A.D. 1342-3. (41.) § Note that one prayed aid of his brother by reason of coparcenary, because the tenements were partible, and had it. And the prayee in aid being summoned did not appear, wherefore the tenant alleged that his grandfather was seised of these tenements and others, and died seised, after whose death his father and his uncle entered, and made partition by custom, and in such a manner that by allotment these tenements and others fell to his father, from whom they descended to his brother and himself, and between them partition was made as above, and so he held in coparcenary with his uncle and prayed aid of him.—*Seton*. You have already had aid of your brother against whom you are to recover *pro rata*. And also by your first aid-prayer you supposed that you held in coparcenary with no other, and at the commencement you might have prayed aid of both; wherefore now you shall not be admitted.—*SHARSHULLE*. By the first aid-prayer nothing is supposed which is contrary to this aid-prayer, for in that branch he held in coparcenary with no other but his brother; but those two held in coparcenary over, by the

Aid-prayer by reason of coparcenary granted. And the prayee in aid did not come. And the tenant prayed aid of another, by reason of another partition higher up, and had it.

No. 41.

(41.) ¹ § *Nota* qun pria eide par resoun de par- A.D. 1342-3.
 cenerie de son frere, pur ceo qe les tenements furent Eide
 departables, *et habuit*. Et leide somons² ne vint pas, Priere de
 par quei le tenant alleggea qe soun aiel fut seisi de parcenerie
 ceux tenements et autres, et morust seisi, apres qi Et ne vint
 mort son pere et son uncle entrerent et departirent⁴ pas. Et
 par usage, et issint qe par alotement ceux tenementz le tenant
 et autres furent jetuz⁵ a son pere, de qi descendi- pria eide
 rent a son frere et luy, entre queux la departie fut par resoun
 fait, *ut supra*, issint tient il en parcenerie ove son dautre
 uncle, et pria eide de luy.—*Setone*. Vous avez eu purpartie
 avant ces hures eide de vostre frere vers qi vous plus haut
 estes a aver *pro rata*. Et auxi par vostre primere dune
 eide priere. vous supposastes qe vous tenistes en autre, et
 parcenerie ove nul autre, et al comencement vous lavoit.³
 purrez aver prie⁶ eide de lun et lautre; par quei a [Fitz.
 ore vous ne serrez pas resceu.—*SCHAR*. Par la Aide,
 primere eide priere nest pas suppose chose contrarie 134.]
 a ceste eide priere, qar il tient en cele braunche en
 parcenerie ove nul autre forsqe ove son frere; mes
 eux deux tiendrent⁷ en parcenerie outre, par la

"Gauselinum presentatus, et quod
 "ipse nullam injuriam nec impe-
 "dimentum predicto Willelmo
 "Tenerey inde fecit. Et hoc parati
 "sunt verificare, unde petunt
 "judicium. Et Gauselinus dicit
 "quod ipse est persona ecclesie
 "predicta, et quod cantaria
 "predicta plena et consulta est de
 "predicto Willelmo filio Thomae
 "de advocacione ipsius Gauselini,
 "et fuit per sex menses ante diem
 "impetrationis brevis, &c. . . .
 "Et hoc paratus est verificare,
 "unde petit judicium de isto brevi,"
 &c.

The plaintiff in his replication
 traversed the plenarty on the day
 of the purchase of the writ. A

mandate was thereupon sent to the
 Bishop of Coventry and Lichfield
 to enquire, and certify the Justices
 as to the fact. The Bishop returned
 that the chantry had been full for
 six months and more before the
 purchase of the writ; and judgment
 thereupon passed for the defend-
 ants.

¹ From the four MSS. as above.

² The marginal note, except the
 words Eide Priere, is from 25,184
 alone.

³ Somons is omitted from 22,552,
 and 25,184.

⁴ L., departerunt.

⁵ L., allotez.

⁶ So in L.; the other MSS. eu.

⁷ L., teignount.

Nos. 42, 43.

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1342-3.

first partition, with their uncle, and by the default of the prayee in aid, his aid-prayer shall not be taken away; wherefore let him have the aid.—And SHARSHULLE said however many partitions there may be above, aid shall be granted by reason of each partition.

Aid-prayer for aid of the King was granted, and afterwards the tenant prayed aid, as tenant for term of life, of one in remainder, and had it, notwithstanding that the first prayer was in lieu of voucher.

(42.) § A writ was brought against Elizabeth de Burgh, who prayed aid of the King, as tenant for term of life, and showed a charter on a previous occasion, &c. The King now sent a writ to proceed.—*Blaykeston*. We tell you that the King gave us these tenements in exchange for other lands which we held, for term of our life, of the inheritance of our husband's heir, so that we should hold these tenements for the term of our life, with remainder to our husband's heir, without whom we cannot answer; and we pray aid of him.—*Gaynesford*. You have, by force of the same charter, had aid of the King, which is in lieu of voucher; judgment.—*Blaykeston*. Without the King we could not answer at all, and also we shall not have to the value from the King, in right of our husband's heir, through the first aid-prayer.—*Gaynesford*. Yes, you will have it.—SHARDELOWE. Let her have the aid.—*Quere*.

Note that, pending an Assise, the defendant caused to be brought

(43.) § Note that one Richard de Audele sued an Assise of Novel Disseisin in the country, and Richard's adversary caused a *Præcipe quod reddat* to be brought, in Richard's name, against himself in respect of the same tenements, returnable now. And on the first day he came

Nos. 42, 48.

primere purpartie, ove lour uncle, et par sa default ne serra pas tollet a cestuy sa priere; parquei eit leide.—Et SCHAR. dit qe feussent il ja tant¹ des purparties paramount par resoun de chescun purpartie serreit eide graunte. A.D.
1342-3.

(42.)² § Bref fuit porte vers Elizabeth⁴ de Burgh,⁵ *Eide Priere* qe pria eide du Roi, come tenante a terme de vie, et moustra chartre⁶ autrefoith, &c. Le Roi manda ore bref daler avant.—*Blaik.* Nous vous dioms qe le Roi nous⁷ dona ceux⁸ tenements en eschaunge pur autres⁹ terres¹⁰ queux¹¹ nous tenimes,¹² a terme de nostre vie, del heritage leir nostre baroun, issint qe nous tendroms ceux tenements a terme de¹³ nostre vie, le remeindre al heir nostre baroun, saunz qi nous ne poms respoundre; et prioms eide de luy. —*Gayn.* Vous avez eu¹⁴ eide du Roi par force de mesme la chartre qest en lieu de vouchier; jugement,¹⁵ &c.—*Blayk.* Saunz le Roi nous ne poms rien respoundre, et auxi nous naveroms pas a la value du Roi, en le dreit leir nostre baroun, par la primere priere.—*Gayn.* Si averez vous.—SCHARD.¹⁶ *Habeat auxilium.—Quere.* *Nota*
du Roi grante, et puy le tenant pria eide, come tenant a terme de vie, dun en le remeindre, et habuit, non obstant qe la priere fuit en lieu de vouchier.³ [Fitz., Aide, 135.]

(48.)² § *Nota* qun Richard Daudele suyst une Assise de Novele Disseisine en pais, et son adversare fist porter un *Præcipe quod reddat* en soun noun vers luy de mesmes les tenements retournable a ore. Et al primer jour il vint et demanda la *Nota*
qe, pendant une Assise, le defendant fit porter

¹ Harl., tenauntz.

² From the four MSS. as above.

³ The marginal note, except the words Eide Priere, is from 25,184 alone.

⁴ L., Elizabet.

⁵ L., Burch.

⁶ chartre is omitted from L.

⁷ nous is omitted from L. and Harl.

⁸ L., mesmes les.

⁹ L., autre.

¹⁰ L., terre.

¹¹ L., quele.

¹² L., tenoms.

¹³ The words terme de are from L. alone.

¹⁴ eu is from L. alone.

¹⁵ jugement is omitted from L.

¹⁶ Harl., *Blayk.*

Nos. 44, 45.

A.D. 1342-3. and demanded view against one who caused himself to be put forward in Richard's name, and had view.—
 a writ of a higher nature, in the plaintiff's name, in respect of the same tenements; and, after view granted, the plaintiff showed the deceit, and, at his prayer, the record of the *Præcipe quod reddat* was cancelled.
 And Richard came three days afterwards, and brought the deceit to the notice of the Court, and disavowed the suit in the *Præcipe quod reddat*, because that was sued in order to oust him from a writ of a lower nature, to wit, his Assise.—And on account of the mischief, and because Richard was recognised, and also because the clerk who entered the award of view said he was not that Richard who proffered himself on the previous occasion as demandant, and because this *Præcipe* was sued for the purpose of ousting Richard from a writ of a lower nature, to wit, an Assise, by allowance of the Court the record was cancelled, and marked, and Richard found surety to sue against the person who compassed the deceit. And Richard had a writ to the Sheriff of Somerset to take the body of his adversary.

Deceit on a Recognisance proved. (44.) § Note that William de Melton sued a writ of Deceit following a *Scire facias* upon a recognisance, where his lands had been delivered by default. And the deceit was proved by examination; wherefore it was adjudged that he should have his land again and the issues in the meantime. And this was in the King's Bench.

Detinue of (45.) § A.¹ brought a writ of Detinue of a writing

¹ For the real names, and for particulars differing, in some respects, from the report, see the notes pp. 205, 207, and 209.

Nos. 44, 45.

vewe [vers un qe² se³ fit profrere en le noun Richard, et avoit la vewe].⁴—Et Richard vint iij jours⁵ apres, et moustra la desceite a la Court, et desavowa la suite en le *Præcipe quod reddat*, qar ceo fut suy de luy ouster de bref de plus bas nature, saver, sassise.⁶—Et pur le meschief, et pur ceo qe Richard fut conu, et auxi le clerk qentra la vewe dit qe ceo ne fut pas mesme⁷ cesty Richard qe se profri autrefoith come demandant, [et pur ceo qe cest *Præcipe* fut suy pur luy ouster de bref de plus bas nature, saver, dassise],⁸ de graunt de Court⁹ le recorde fut dampne, et merche, et Richard trova soerte de suyre vers celuy qe compassa la desceite. Et avoit bref a Vicounte de Somersete de prendre son corps, &c.

A.D. 1342-3.
un bref de [plus] haut nature, en noun de pleintif, de mesmes les tenements; et, apres la vewe grante, le pleintif mostra la deceite, et, a sa priere, le recorde de *Præcipe quod reddat* fut dampne.¹

(44.)¹⁰ § *Nota* qe William de Meltone¹² suyst bref de Desceite hors dun *Scire facias* sur une¹³ reconisance, ou ses terres furent liveres¹⁴ par default. Et la desceite par examinement atteinte; par quei fut agarde qil reust¹⁵ sa terre, et les issues en le meen temps. Et ceo fut en Baunk le Roy.

Deceite sur reconisance atteinte.¹¹ [Fitz., *Disceit*, 36.]

(45.)¹⁶ § A. porte bref de Detenue descript vers Detenue

¹ The marginal note is from 25,184 alone. In Harl., the note is *Assise de Novele Disseisine*.

² Harl., qil.

³ 22,552, ly.

⁴ The words between brackets are not in L.

⁵ L., un jour.

⁶ The words *saver sassise* are omitted from L.

⁷ *mesme* is from L. alone.

⁸ The words between brackets are from L. and Harl., the words *par quei* being substituted in the other MSS.

⁹ All the MSS. except L., *grace*, instead of *graunt de Court*.

¹⁰ From the four MSS. as above.

¹¹ The words *sur reconisance* atteinte are from 25,184 alone.

¹² L., Miltone.

¹³ L., dun; 25,184, hors dune, instead of *sur une*.

¹⁴ L., deliveres.

¹⁵ L., eit.

¹⁶ From the four MSS. as above, but corrected by the record *Placita de Banco*, Hil. 17 Edw. III. R^o 333. It there appears that the action was brought by Richard de Cary, son of Joan de Cary, against Richard de Westpolaworthy, chaplain.

No. 45.

A.D.
1342-3
a writing
brought
against
one who
alleged
that he
was
enfeoffed
of the
land, and
that
therefore
the deed
belonged
to him.

against B.,¹ and counted that D.¹ his ancestor delivered it to B.¹ to be redelivered, &c.—*Gaynesford*. We tell you that A.¹ was seised and died seised of the identical tenements comprised in the charter, and of others, and had issue K.¹ (mother of A.¹ who brings the writ) and E.,¹ which K. and E. entered, as daughters and heirs, and made partition of the lands comprised in the writing, and of others; and this land comprised in the charter was allotted to E. as her purparty, which E.¹ enfeoffed us of the same land; judgment, since we are tenant of the land comprised in this deed, to whom it belongs to have this deed in defence of our tenancy, whether against us an action, &c.—*Blaykeston*. We tell

¹ For the real names, and for particulars differing, in some respects, from the report, see the notes pp. 205, 207, and 209.

No. 45.

B., et counta qe D. soun auncestre luy bailla, &c.,
 a rebailier, &c.²—*Gayn.* Nous vous dioms qe A.
 fut seisi, et morust seisi de mesmes les tenements³
 compris deinz la chartre,⁴ et des autres, et avoit
 issue K. mere A. qe porte le bref, et E., les queux
 K. et E. entrerent, come filles et heirs, et firent
 purpartie [de les terres compris deinz lescript et
 daltrez]⁵; et ceste terre compris deinz la chartre fut
 alote a la purpartie E., et laquele E. nous enfeffa
 de mesme la terre; [jugement, depuis qe nous sumes
 tenant de la terre]⁶ compris deinz ceo fait, a qi il
 attient daver ceo fait en defence de nostre tenance,
 si vers nous accion, &c.⁷—*Blak.* Nous vous dioms

A.D.
1342-3.

descript
vers cely
qe alleges
qil est
feffe des
terres, par
quei le fet
atteint a
ly.¹

¹ The marginal note, except the word *Detenus* is from 25,184 alone.

² The declaration, according to the roll, was "quod cum quædam Johanna, mater prædicti Ricardi de Cary, cujus heres ipse est, tradidisset prædicto Ricardo de Westpolaworthy quandam chartam custodiendam, in qua continetur quod quædam Agnes de Collecumbe dedit Florencie filie Baldewini de Esse, pro homagio et servitio suo, manerium de Westpolaworthy, quod est unum mesuagium et duæ carucatæ terræ, cum pertinentiis, tenendum sibi et heredibus suis in perpetuum, et retradendam eidem Johannæ vel heredibus suis, cum inde per ipsam Johannam vel per aliquem heredum suorum requisitus fuisset, idem Ricardus de Westpolaworthy prædictæ Johannæ prædictam chartam non reddidit nec eidem Ricardo de Cary, filio suo, post mortem ejusdem Johannæ, sed adhuc ei reddere contradixit."

³ All the MSS. but L., les terres, instead of mesmes les tenements.

⁴ L., lescript.

⁵ The words between brackets are from L. alone.

⁶ The words between brackets are omitted from 25,184.

⁷ The plea, according to the roll, was "non dedicit quin prædicta Johanna liberavit sibi chartam prædictam custodiendam in forma prædicta, nec quod idem Ricardus filius Johannis sit heres ipsius Johannæ, sed dicit quod prædicta Florencia fuit seisita de tenementis, quæ continentur in prædicta charta, et de aliis tenementis, et inde obiit seisita in dominico suo ut de feodo et jure, post cujus mortem eadem tenementa et alia descenderunt quibusdam Sibyllæ et Alicie ut filiabus et heredibus, &c., inter quas eadem tenementa et alia partita fuerunt, et tenementa in prædicta charta contenta assignata fuerunt propartie ipsius Sibyllæ, et eadem Sibylla postmodum de eisdem tenementis feoffavit quendam Michaelem de Westpolaworthy patrem prædicti Ricardi, cujus heres ipse

No. 46.

A.D. 1342-3. you that E.¹ died while D.¹ our ancestor was living ; ready, &c.—*Gaynesford*. She survived, and enfeoffed us ; ready, &c.—And the other side said the contrary.

Debt in (46.) § A writ of Debt was brought in the County of

¹ For the real names, and for particulars differing, in some re- | spect, from the report, see the notes pp. 205, 207, and 209.

No. 46.

ge E. morust vivaunt D. nostre auncestre; prest, A.D.
1342-3
&c.—*Gayn.* Ele survesquist et nous enfeffa; prest,
&c.—Et *alii e contra*.¹

(46.)² § Bref de Dette porte en le Counte de Dette en

"est, et ita tenet ipse tenementa in
"prædicta charta contenta per
"descensum hereditarium post
"mortem prædicti patris sui, per
"quod ipse non intelligit quod
"prædictus Ricardus filius Johanne
"actionem petendi versus eum
"prædictam chartam habere de-
"beat, unde petit judicium," &c.

¹ The pleadings subsequent to the plea are in the roll as follows:—
"Et Ricardus de Cary, non cognos-
"cendo quod prædictus Ricardus
"de Westpolaworthy seisitus est
"de tenementis in prædicta charta
"contentis, dicit tamen quod
"prædicta Florencia, proavia sua
"fuit seisa de eisdem tenementis
"et habuit duas filias, scilicet
"prædictas Sibyllam et Aliciam,
"quæ quidem Sibylla obiit, sine
"herede de se, vivente prædicta
"Florencia, et postea eadem
"Florencia obiit, post cujus mor-
"tem eadem tenementa de-
"scenderunt cuidam Aliciæ ut
"filie et heredi, et de ipsa Alicia
"descenderunt eadem tenementa
"prædictæ Johanne ut filie et
"heredi, matri ejusdem Ricardi
"qui nunc queritur, quæ quidem
"Johanna chartam prædictam
"prædicto Ricardo de Westpola-
"worthy in forma prædicta libera-
"vit, et ex quo idem Ricardus de
"Westpolaworthy superius ex-
"presse cognovit quod prædicta
"charta ei liberata fuit in forma
"prædicta petit judicium et char-
"tam prædictam sibi liberari," &c.
"Et Ricardus de Westpola-

"worthy dicit quod, cum prædictus
"Ricardus de Cary nititur disra-
"tionare chartam prædictam ver-
"sus eum, supponendo quod
"prædicta tenementa integre des-
"cenderunt prædictæ Aliciæ, avie
"prædicti Ricardi de Cary, et quod
"prædicta Sibylla, quam ipse sup-
"ponit prædictum Michaellem
"patrem suum feoffasse, obiit sine
"herede de se, vivente prædicta
"Florencia, eadem Sibylla super-
"vixit ipsam Florenciam, et ipsa
"Sibylla et prædicta Alicia, ut sor-
"res et heredes, &c., fecerunt inde
"inter eas propartiam, prout ipse
"superius in responsione sua alle-
"gavit. Et hoc paratus est verifi-
"care, unde petit judicium," &c.

"Et Ricardus de Cary dicit
"quod prædicta Sibylla obiit sine
"herede de se, vivente prædicta
"Florencia, et hoc petit quod
"inquiratur per patriam."

Here issue was joined. Nothing more appears on the roll, except the award of the *Venire*.

² From the four MSS., as above, and compared with the record, *Placita de Banco*, Hil. 17 Edw. III. R^o 317. It there appears that the action was brought by Hugh de Hareston, son and heir of William de Coleforde, against William de Bodbran, the younger, cousin and heir of Bernard son of Roger de Bodbran. In the margin is the word *Cornubia*, which shows that the writ was, as stated in the report, brought in Cornwall.

No. 47.

A.D.
1342-3.
one county
and
obligation
executed
in another
County,
and, on a
traverse
taken in
avoid-
ance of
the deed,
the jury
shall come
from the
County in
which the
deed was
executed.

Cornwall. And *profert* was made of a specialty, being an obligation, which bore date in Devonshire. And the parties were at issue, in avoidance of the deed, as to whether the defendant was under age or of full age at the time of the execution; and no protestation was made as to where he was born.—And they were disputing as to whence the jury should come, whether from the county in which the writ was brought, or from the county in which the deed was executed.—And by judgment the jury shall come from the county in which the deed was executed.

Crown.
Note that
a writ of
Appeal for
a clerk
convict,
who had
escaped,
was
refused.

(47.) § Note that a clerk convict delivered to the Ordinary escaped, and killed two men afterwards. And he was indicted, taken, and arraigned in the King's Bench. And there, before the Coroner, he confessed the felony, and would have appealed others. And, because he was, in a manner, out of the law by reason of the first conviction, Scot, with the assent of the whole COUNCIL, said to him that he should not be

No. 47.

Cornewaille. Et especialte,² obligacion,³ fut mys avant, qe porta date en Devone. Et les parties sount a issue, en voidance del fait, le quel le defendant fut deinz age ou de plein age al temps de la confeccion; et nul protestacion fut fait ou il nasquit.—Et ils sount en debat dount pais vendra, le quel del Counte ou le bref est porte, ou del Counte⁴ ou le fait se fist.—Et par agarde pais vendra del Counte ou le fait se fist.⁵

A.D.
1342-3.
un Counte,
et obliga-
cion fet en
autre
Counte, et,
sur travers
pris en
voidaunce
du fet,
pays
vendra del
Counte ou
le fet se
fit.¹

(47.)⁶ § *Nota* qun clerk atteint delivers⁸ al Ordiner⁹ eschapa, et tua ij hommes apres. Et fut endite, pris, et arene¹⁰ en Baunk le Roi. Et illoeqes, devant le Coroner, conust la felonie, et voleit aver appelle autres: Et pur ceo qil fut, en manere, hors de la ley par le primer atteindre,¹¹ Scor, *ex assensu totius* CONCILII, luy dit qil ne serra pas¹² resceu

Corona.
Nota
bref de
Appello
refuse pur
clerk
atteint qe
eschapa.⁷
[17Li.,
Ass., 4;
Fitz.,

¹ The marginal note, except the word Dette is from 25,184 alone.

² especialte is from 22,552 alone.

³ The specialty was a release of all services, except homage, and relief, due for one knight's fee and a half in the county of Devon, by Bernard son of Roger de Bodbran, to the plaintiff's father, in fee, with a covenant that if the relessee or his heirs or assigns should be impleaded or distrained in respect of any other services due for the fee and a half, the relessor, his heirs, and assigns were bound to pay £100 to the person impleaded or distrained. The ground of the action of Debt was that a distress was levied on the plaintiff's tenant, that the defendant refused to deliver up the distress, and that in a subsequent action of Replevin the defendant avowed upon Hugh, as his very tenant, for services other

than homage and fealty. The deed was dated at Plympton in the County of Devon.

⁴ All the MSS. except L., la, instead of del counte.

⁵ The last sentence is omitted from L. The award of the *Venire* was, according to the roll, in these words:—"Et, quia data scripti
" *prædicti* est in *prædicto* Comitatu
" *Devoniæ*, *præceptum* est eidem
" *Vicecomiti* *Devoniæ* quod venire
" *faciat*," &c.

⁶ From the four MSS. as above.

⁷ The marginal note is from 25,184. In other MSS. it is *De Corona*.

⁸ L., delivererz.

⁹ Harl., Ordeigner.

¹⁰ 22,552, aresne.

¹¹ L., esteyndre.

¹² 22,552, purra pas estre, instead of serra pas.

Corone et
Pices de
Corone,
112, and
445.]

No. 48.

A.D.
1342-3. admitted to appeal, and asked the Ordinary whether he would claim him.—And, pending consideration whether he should be delivered to the Ordinary or not, he was remanded to prison.

Note (48.) § Note that in respect of a matter touching

No. 48.

dappeller, et demanda del Ordiner sil luy voleit chalanger.—Et sour avis le quel il serra livere al Ordiner ou noun, il est remys en prisoun.¹ A.D.
1342-3.

(48.) ² § *Nota* qe de chose touchant le Roy *Nota*

¹ The case appears on the "Rex" part of the *Placita coram Rege* (or Pleas of the Crown) Hil. 17 Edw. III. in the following form:—"Memorandum quod . . .
" . . . Willelmus Turnebole de
" Cotyngtone juxta Tame in Comitatu Bukinghamie, coram Johanne de Lincolnia Coronatore de Banco domini Regis, et Willelmo Hussiere Coronatore Libertatis Abbatis Westmonasterii, devenit probator, et cognovit se esse felonem Regis, maxime de eo quod ipse simul cum [three others] gaolam Libertatis Abbatis Westmonasterii apud Westmonasterium noctanter et felonice frequerunt et abinde evaserunt, de qua quidem feloniam appellat prædictos [three] de facto et auxilio." He then goes on to appeal various persons of having committed, together with himself, various robberies specified, and of having feloniously slain John Blunville, who is the only person mentioned as having been killed. Writs issued for the Sheriffs of various counties to take the persons appealed. The case ends thus in the roll:—"Postea hoc eodem termino Sancti Hilarii prædictus Willelmus Turnebole appellum suum prædictum dedixit, asserens se clericum esse, &c. Et re liberatur Ordinario Abbatis Westmonasterii salvo custodiendus," &c.

It appears also on R^o 23, d. that there was an Inquisition taken in the King's Bench as to the escape of clerks convict, including Turnebole, from the prison of the Abbot of Westminster, and that a writ issued to cause the Abbot to come into the King's Bench to answer as to the matters found. He appeared by attorney, and it was alleged on his behalf "quod hujusmodi articulus de evasione clericorum sic convictorum in Itinere Justiciariorum Itinerantium specialiter et non alibi est inquirendus, et quod hujusmodi evasiones, si contigerint, coram Justiciariis Itinerantibus, et non alibi, sunt adjudicandæ, per quod non intendit quod dominus Rex ipsum Abbatem in præmissis velit hic inde occasionare vel inquietare, quousque &c. Et si videatur Curie, &c., idem Abbas paratus est ulterius respondere &c. prout Curia," &c.

"Et quia Curia consultius vult avisari priusquam, &c., datus est dies præfato Abbati," &c.—There were several further adjournments, but the decision on this point does not appear.

² From the four MSS., as above. The record of the case appears in the "Rex" part of the *Placita coram Rege* of Hil. 17 Edw. III. R^o 30, d; and it is printed in the Appendix (A.) at the end of this volume.

No. 49.

A.D.
1342-3.
touching
an Appeal,
at the
suit of
the King,
by bill.

the King directly or indirectly they admit an Appeal, in the King's Bench, by bill, witness the case of Thomas of York, who was arraigned at the suit of a yeoman who sued on the King's behalf in respect of a cup belonging to the Queen. And Thomas asserted that it was his cup, and he appealed over the bailiffs of York, and that by bill, in respect of the same cup.—And one of them who came by *Capias* was arraigned, and *Capias* was awarded against the others.—And the King's Bench was then at Westminster, and the robbery was supposed to have been committed at York.—And Scot said that the Justices are Sovereign Coroners of the Realm, wherefore, since Sheriffs and Coroners can admit Appeals without writ, *a fortiori* the Justices can do so; and this has been seen heretofore.—Scot charged, because the cup was in Court, which makes it, as it were, mainour, upon which the party is arraignable without any other indictment.—But note that the cup was not found in the possession of the person who was arraigned, for it came [into Court] out of the custody of another person, by virtue of a writ.—And Scot said that they had besides a writ to proceed to the arraignment.

Ejectment
from
Wardship
for an
assignee.
Exception
was taken
to the
writ
because
the lease

(49.) § Nicholas Bokelonde brought a writ of Ejectment from Wardship against Margaret late wife of Ivo de Kenton and others, *ad respondendum quare, cum custodia triginta acrarum terre, et decem acrarum pasturæ, cum pertinentiis, in Kentone, usque ad legitimam ætatem Ivonis filii et heredis Ivonis de*

No. 49.

mediate et immediate ils resceivent² Appelle, en Baunk le Roi, par bille, *teste* Thomas Deverwyke qe fut arene³ [a la suite un vadlet qe suist pur le Roy]⁴ de la coupe la Reigne.⁵ Et Thomas avowa qe cest sa coupe, et il appella outre les baillifs⁶ Deverwyke, et ceo par bille, de mesme la coupe.—Et un deux qe vint par *Capias*⁷ fut arene, et *Capias* vers les autres agarde.—Et le Baunk le Roi fut adonques Westmestre, et la roberie fut suppose estre fait a Everwyke.—Et Scor dit qils sount Sovereyns Coroners de la terre, parquei quant Vicountes et Coroners pount resceivere Appelles sanz bref,⁸ a plus fort les Justices le pount faire; et ceo ad este vew a devant.—Scor chargea, pur ceo qe la coupe fut present, qest come meynovere,⁹ sur quei, sanz autre enditement, partie est arenable.¹⁰—*Sed nota* qe la coupe ne fut pas trove en la possession celui qe fut arene,¹¹ qar ele vint par bref hors dautri garde.—Et Scor dit qils avoient bref ovesqe daler a lareignement.¹²

(49.)¹³ § Nichole Bokelonde porta bref dengettement de Garde vers Margarete qe fut la femme Ive de Kentone et autres, *ad respondendum quare, cum custodia triginta acrarum terre, et decem acrarum pasture, cum pertinentiis, in Kentone, usque ad legitimam etatem Ivonis filii et heredis Ivonis de*

A.D.
1342-8.
de Appello,
ad sectam
Regis, per
billam.¹
[17 Li.
Ass., 5;
Fitz.
Corone et
Plees
de Corone,
174.]

Engette-
ment
de Garde
pur
assigne.
Le bref
chalance
pur ceo
qe le lees

¹ The marginal note, except the word *Nota*, is from 25,184 alone.

² L., resceiverent.

³ L., deresne.

⁴ The words between brackets are omitted from 22,552.

⁵ 22,552, Roynce.

⁶ All the MSS. except L., le baillif.

⁷ The words qe vint par *Capias* are omitted from 22,552.

⁸ The words sanz bref are from 22,552 alone.

⁹ Harl., meynour.

¹⁰ L., resnable.

¹¹ L., aresne.

¹² L., a leresnement; Harl., al arrenement.

¹³ From the four MSS., as above, but, corrected by the record, *Placita de Banco*, Hil. 17 Edw. III. R^o 352, d. It there appears that the action was brought by Nicholas de Bokelonde against Margaret late wife of Ivo de Kenton, Clement Barker, and John de Welasham.

No. 49.

A.D. 1342-3. *Kentone, ad ipsum Nicholaum pertineat, ratione dimissionis quam Johannes de Eltham, nuper Comes Cornubie, fecit præfato Nicholao de custodia maneriorum de Aspale et Hardeberghe usque ad legitimam ætatem Johannis filii et heredis Edwardi Peverel, de quo quidem Johanne filio Edwardi præfatus Ivo de Kentone dictas terram et pasturam tenuit per servitium militare, inde fecit eidem Nicholao, et idem Nicholaus in plena et pacifica seisinâ ejusdem custodiæ terre et pasturæ diu extiterit, iidem Margareta, Clemens, et Johannes de Welasham, herede prædicti Ivonis de Kentone infra ætatem existente, præfatum Nicholaum a custodia illa violenter ejecerunt, &c.* And he counted in accordance with the writ, and that Ivo de Kenton held of John son and heir of Edward Peverel as of the manors of Aspale and Hardeberghe, and that the manors were leased to him with all the profits, &c.—*Pulteney*. It cannot be understood that the services of a man are regardant to two manors; judgment of the count.—*Thorpe*. Yes, it can well enough, for if I be seised of two

made was twice recited in the writ, and afterwards because parcel of the land was in a vill not mentioned in the writ. The exceptions were not allowed. Afterwards they were at issue as to whether the land was held by knight-service, or in socage.

No. 49.

Kentone, ad ipsum Nicholaum pertineat, ratione dimissionis quam Johannes de Eltham, nuper Comes Cornubie, fecit præfato Nicholao de custodia maneriorum de Aspale et Hardeberghe usque ad legitimam ætatem Johannis filii et heredis Edwardi Peverel, de quo quidem Johanne filio Edwardi præfatus Ivo de Kentone dictas terram et pasturam tenuit per servitium militare, inde fecit eidem Nicholao, et idem Nicholaus in plena et pacifica seisina ejusdem custodiæ terræ et pasturæ diu extiterit, iidem Margareta, Clemens, et Johannes de Welasham, herede prædicti Ivonis de Kentone infra ætatem existente, præfatum Nicholaum a custodia illa violenter ejecerunt, &c.² Et counta acordant al bref, et qe Ive de Kentone tient de Johan fitz et heire Edward Peverel come des maners de Aspale et Hardeberghe, et qe les maners luy furent lesses ove touz les profits, &c.³—Pult. Ceo ne poet estre entendu qe les services dun homme⁴ pount estre regardants a ij maners; jugement du counte.—Thorpe. Si poet assez bien, qar si jeo soy⁵ seisi de deux

A.D.
1842-3.
fait ij
toitz
reherce
par le
bref, et
puis de
ceo qe
parcele de
la terre
fuit en
autres
ville nient
nome el
bref. Non
allocatur.
Puis sont
a issue
lequel la
terre soit
tenue par
service de
chivaler
ou en
sokage.¹
[Fitz.
Garde,
109.]

¹ The words of the marginal note subsequent to Garde are from 25,184 alone.

² The passage in Latin is printed as it appears in the roll, the mistakes in the MSS. of Y.B. not being noticed.

³ The count or declaration was, according to the roll, "quod cum prædictus Edwardus Peverel tenuit de prædicto Comite prædicta maneria cum pertinentiis per servitium duorum feodorum militum, et idem Comes custodiam maneriorum prædictorum, ratione minoris ætatis Johannis filii et heredis prædicti Edwardi, usque ad legitimam ætatem ejusdem heredis ipsi Nicholao dimisisset, de quo quidem Johanne prædictus

"Ivo de Kentone prædictam terram et pasturam tenuit per servitium octavæ partis feodi unius militis et quinque solidorum per annum, ac idem Nicholaus in plena et pacifica seisina ejusdem custodiæ a festo Sancti Michaelis anno regni Regis nunc quarto decimo usque Festum Paschæ tunc proxime sequens extitisset, prædicti Margareta, Clemens, et Johannes die Lunæ proximo post prædictum Festum Paschæ, prædicto herede præfati Ivonis infra ætatem existente, præfatum Nicholaum apud Kentone a custodia illa violenter ejecerunt."

⁴ L., tenant.

⁵ L., su.

No. 49.

A.D.
1842-3.

manors before the Statute,¹ and make a feoffment to you in fee, or after the Statute¹ in fee tail, and parcel be of one manor, and parcel of the other, to hold of me by certain service, as one tenancy, the services are regardant to both manors.—*Pulteney*. Judgment of the writ, for by the writ it is supposed that John Earl of Cornwall leased twice over, because the words *inde fecit* occur twice over.—*SHARSHULLE*. At any rate there is sufficient matter, and there is no ground for abating his writ by reason of nugation.—*Pulteney* passed on *gratis*, and demanded judgment of the writ, because four acres of land, parcel of his demand, are in Debenham which is not mentioned in his writ; judgment of the writ.—*SHARDELOWE*. How do you know that? Not by view. And he cannot recover anywhere except where he supposes that he has been ejected. And you must answer as to the ejectment.—*Pulteney*. We tell you that the tenements are held in socage. And he showed how Margaret, who is the infant's mother, seized, &c., by reason of nurture; judgment whether the writ lies against her.—*Thorpe*. You see plainly that he does not answer as to the ejectment, for he has not traversed it, nor has he avowed it for any cause; and the tenancy is not to be tried on this possessory writ, as it would be on a writ

¹ 13 Edw. I. (Westm. 2) c. 1. (*De donis conditionalibus*.)

No. 49.

maners devant estatut, et face feffement a vous en fee, ou puis lestatut en fee taille, et parcelle soit de lun maner, et parcelle de lautre, a tener¹ par certain service de moy, come une tenance, les services sont regardants a touz les deux² maners.—*Pult.* Jugement de bref, qar par le bref est suppose que Johan counte de Cornewaylle³ lessa deux foitz, qar il y ad deux foitz *inde fecit*.—*SCHAR.* Au meyns il y ad assez de matere, et nest pas resoun dabatre son bref par nugacion.—*Pult. gratis* passa, et demanda jugement du bref, pur ceo que quatre⁴ acres de terre, parcelle de sa demande, sont en Debenham⁵ nient nome en son bref; jugement du bref.⁶—*SCHARD.* Coment le savez vous? Nient par la vewe. Et il ne poet recoverir forsque la ou il suppose estre engette. Et al engettement il covient que vous reponiez.—*Pult.* Nous vous dioms que les tenements sont tenuz en sokage. Et moustra coment Margarete, qest mere lenfant, seisisist, &c., par resoun de nuture; jugement si vers luy le bref gise.⁷—*Thorpe.* Vous veiez bien coment il ne respount pas al engettement, qar il nel ad pas traverse,⁸ nil ne lad pas avowe par cause; et la tenance nest pas a trier en ceo bref de possession,⁹ come ceo serreit en bref de

A.D.
1342-3.

¹ The words a tener are omitted from L., and Harl.

² All the MSS. except L., deux les, instead of les deux.

³ L., C.; 22,552, and 25,184, Cornub.

⁴ L., iij.

⁵ L., Boudenham.

⁶ The words du bref are from L. alone.

⁷ *Pulteney's* plea, on behalf of Margaret, is thus represented on the roll: "quod prædicta tene-
"menta tenentur in socagio, et
"quod prædictus Ivo de Kentone

"eadem tenementa tenuit in
"socagio, et inde obiit seisisit,
"post cujus mortem ipsa Mar-
"gareta mater prædicti Ivonis filii
"et heredis prædicti Ivonis de
"Kentone, ut propinquior amica
"ejusdem heredis, seisisit tene-
"menta prædicta ad usum ejusdem
"heredis infra ætatem existentis,
"unde petit iudicium si breve istud
"versus ipsam jaceat," &c.

⁸ The words il nel ad pas traverse are omitted from 25,184.

⁹ L., Trespas.

Nos. 50, 58.

A.D.
1342-3.

of [Right of] Wardship; judgment. And afterwards he passed over *gratis*, and said that the land is holden by knight-service, and not in socage; ready, &c.—And the other side said the contrary.—And, as to all the others, they traversed the ejectment, and upon that they were at issue.

Protec-
tion.

(50.) § An inquest was taken at *Nisi prius* which passed for the demandant, and thereupon a day was given to the parties in the Bench to hear their judgment; and on that day the defendant caused a Protection to be put forward, and prayed that the parol might be put without day.—HILARY. Between the taking of the inquest and the time of rendering judgment it shall not be adjudged that there is any mean time. And suppose the Justices who took the inquest had had power to render judgment on the spot, even though you had put forward the Protection there, after the taking of the inquest, it would not have been allowed; no more will it here, because the Justices can give judgment on the verdict without calling the parties, and consequently the Protection is not allowable, &c.

Debt

(58.) ¹ § On a writ of Debt brought against executors, at the Grand Distress one came, and the other not, wherefore, in accordance with the Statute,² the plaintiff counted against him who came. And in proving the debt he made *profert* of the testator's deed, which deed the executor who appeared denied. And it was afterwards found that this was the testator's deed; wherefore the Court adjudged that the plaintiff should recover against that executor his debt and his damages

¹ This case is here numbered 58, though following No. 50, because it is so numbered in the old editions, and there may be, in some law books, some references to it by that number. For No. 51 of the old editions see p. 170 (No. 34);

for No. 52 p. 92 (No. 19); for No. 53 p. 30 (No. 8); for No. 54 p. 130 (No. 28); for No. 55 p. 144 (No. 29); for No. 56 p. 16 (No. 5) and for No. 57 p. 64 (No. 12).

² 9 Edw. III. St. 1 c. 3.

Nos. 50, 58.

Garde; jugement.¹ Et puis *gratis* il passa, et dit
 qe la terre² est tenu³ par service de Chivaler, et
 noun pas en sokage; prest, &c.—*Et alii e contra*.—
 Et quant a touz les autres il traverserent⁴ lengette-
 ment, et sur ceo sont a issue.⁵

A.D.
1342-3.

(50.)⁶ § Un enqueste fust pris par *Nisi prius* qe
 passa pur le demandant, et sur ceo jour fuit done
 as parties en Baunk de oyer lour jugement; a quel
 jour le defendant mist avant Proteccion, et pria qe
 la parole fust mys saunz jour.—HILL. Entre lenqueste
 pris et le temps del jugement rendu nul mene
 temps serra juge. Et jeo pose qe les Justices qe
 pristerent lenqueste eussent ew power daver rendu
 jugement la, mesqe vous eussez mis avant la Pro-
 teccion illoeges, apres lenqueste pris, il nust pas
 este allowe; nient plus icy, qar les Justices poient
 doner jugement sur le verdit saunz demander les
 parties, et *per consequens* la Proteccion nient allow-
 able, &c.

Protec-
cion.

(58.)⁷ § En un bref de Dette porte vers execu-
 tours, a la Graunt Destresse lun vient, et lautre
 nemye, par quei, acordant a lestatut, le pleintif
 counta vers celui qe vient. Et en provant la dette
 il mist avant le fait le testatour, quel fait cesty
 executour qe vient dedit. Et puis trove fuit qe ceo
 fuit le fait le testatour; par quei la Court agarda qe
 le pleintif recovereit vers luy son dette et ses damages

Dette.

¹ All the MSS. except L., juge-
 ment de bref.

² L., tenaunce.

³ L., tenez de lui.

⁴ L., traversa.

⁵ The issues joined agree with
 the roll.

⁶ This case which is printed in

the old editions is not found in any
 of the known MSS. of this Term.
 They all end with No. 49.

⁷ No MS. of this case has been
 found and there is some reason to
 believe that it is an independent
 report of the first case in the
 following Easter Term.

No. 58.

A.D.
1842-3.

as well from the executor's own goods as from the goods of the testator, and against the other executors who had not pleaded, as much as they had in their hands of the testator's goods on the day of the purchase of the writ of Debt. Afterwards the plaintiff sued execution, whereupon *Greene* brought a writ to send the record into the King's Bench.—*R. Thorpe*. This writ is sued for nothing else but to delay our execution; and we might have had a writ of execution long before this; now he would have a stay of execution by reason of this suing [of a writ of Error]; and it is not right that the record should be sent except at the suit of the person who is aggrieved by the execution, whereof the Court ought to be apprised: for in a case of Dower, where the judgment is that the demandant do recover it against the heir if he have it, and if not against the tenant, the Court will not allow any record to go out, nor grant any *Supersedeas* except at the suit of the person who is ousted by execution; now here the Court is not apprised of any execution, while, even though execution may have been had, it may be of the goods of the deceased, in respect of which they suffer no damage, or, perhaps, execution has been had of the goods of one only, so that the others are not aggrieved.—*W. Thorpe*. We have sufficiently suffered damage, because execution is awarded.

No. 58.

auxi bien de ses biens demenes come des biens le testatour, et vers les autres executours qe navoient mye plede de tant come ils avoient entre mains des biens le testatour jour de bref de Dette purchace. Puis le pleintif suit execucion, sur quei *Grene* porta bref de mander le recorde en Bank le Roy.—*R. Thorpe*. Cest bref nest sue pur autre riens forsque pur targer nostre execucion; et il ad este longement devant ceo qe nous purroms aver bref dexecucion; ore par cause de cele suite volloit il aver *Supersedeas*; et il nest pas resoun qe le recorde soit mande si non a la suite cesty qest greve par execucion, de quei la Court deit estre apprise: qar en cas de Dower, ou le jugement est qe le demandant recovere vers leir sil eit, et si non vers le tenant, la Court ne grantera pas nul recorde hors, ne nul *Supersedeas* si non a la suite celui qest ouste par execucion; ore est la Court apprise de nule execucion, ou, tout fuit lexecucion fait, ceo puit estre des biens le mort, de quei ils sont riens endamage, ou par cas execucion est fait des biens dun, qe les autres ne sont pas greves.—*W. Thorpe*. Assetz sumes nous endamage, qar execucion est agarde.

A.D.
1342-3.

EASTER TERM
IN THE
SEVENTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

EASTER TERM IN THE SEVENTEENTH YEAR OF
THE REIGN OF KING EDWARD THE THIRD
AFTER THE CONQUEST.

No. 1.

A.D. 1343. (1.) § A writ of Debt was brought against three executors. Process was continued as far as the Grand Distress. One came, and against him, by reason of the default of the others, the plaintiff counted in accordance with the Statute¹ and produced the testator's obligation. And the executor denied it. And it was found to be the testator's deed. And therefore it was adjudged that the plaintiff should recover against the defendant and the [other] executors, according to the Statute,¹ the debt and his damages out of the testator's goods. Execution was awarded. The Sheriff returned that he had levied of their goods to the value, whereupon the executors who did not plead sued a writ out of the Chancery to the Justices directing them to do execution, by force of the judgment, in accordance with law and reason, and it was mentioned

Debt was recovered against executors on a plea of one of them, and execution was awarded against all; and those who were not in Court brought a writ reciting that execution had been made of their own goods. And the Justices were commanded to in that writ that their own goods had been put in execution. And by some persons the point was touched that the writ which issued out of the Chancery would serve no purpose, because the Justices would of themselves see whether the execution was made in accordance with the judgment, and, if otherwise,

¹ 9 Edw. III. St. 1. c. 3.

DE TERMINO PASCHÆ¹ ANNO REGNI REGIS
EDWARDI TERTII A CONQUESTU² SEPTIMO
DECIMO.

No. 1.

(1.)³ § Bref de Dette fut porte vers trois executours. A.D. 1343.
Proces continue tanqe al Graunt⁴ Destresse. Un Dette
vint, vers qi, par default des autres par Statut le fuit recov-
pleintif counta, et mist⁵ avant obligacion le⁶ testa- eri vers
tour. Et il le dedit. Et trove fut le fait le testatour. executours
Par quei fut agarde qe le pleintif recovereit vers sur plee
le defendant et⁷ les executours, par Statut, la⁸ dette dun deux,
et ses damages des biens le testatour. Execucion et execu-
agarde. Le Vicounte retourna qil avoit leve de lour agarde
biens a la value, sur quei les executours qe ne⁹ vers touz ;
plederent pas suyrent bref hors de la Chauncellerie et les
a les Justices qils feissent¹⁰ execucion par ley et autres qe
resoun par force¹¹ del jugement, quel bref fist porterent
mention qe lour biens propres furent mys en execu- bref
cion. Et par ascuns gentz fut touche qe le bref qe rehero-
issit de la Chauncellerie servireit¹² de rienz, qar les eaunt qe
Justices deux mesmes verrount si¹³ lexecucion fut fet de
face acordaunt al jugement, et sil soit autrement ils lour biens
Et com-
maunda
as Justices

¹ The Reports of this Term are from the Lincoln's Inn MS., the Harleian MS., No. 741, and the Additional MSS. in the British Museum numbered respectively 22,552 and 25,184.

² 25,184, post conquestum, instead of a conquestu.

³ From the four MSS. as above. The case may possibly be No. 58 of Hilary Term differently reported.

⁴ 22,552, Graund.

⁵ L., il mist.

⁶ L., and Harl., lour.

⁷ The words le defendant et are omitted from 22,552.

⁸ Harl., sa.

⁹ ne is from 22,552 alone.

¹⁰ L., fesoient.

¹¹ L., fourme.

¹² L., and 25,184, servereit; 22,552, servyst.

¹³ 22,552, qe.

No. 1.

A.D. 1343 could redress it themselves.—But *R. Thorpe* said that, because the other executors were not parties to the plea, the Justices would not listen to them, when taking exception to this matter, without a writ from the Chancery.—HILLARY. Our judgment, which is entered on the roll, is warranted by the Statute, which purports that judgment shall be given in respect of the testator's goods against all the executors generally, as well against those who do not appear as against those who plead, and execution must be made accordingly.—*R. Thorpe*. The Statute is made for the advantage of the plaintiff, to shorten process, and purports that like judgment shall be given against those who do not appear at the Grand Distress as against those who plead. And it is certain that, by common law, when executors plead and deny their testator's deed they plead as those who have assets of their testator's goods; wherefore, if the finding be contrary to their plea to issue, judgment shall be given against them generally according to common law, so that in such a case, even though they have nothing of their testator's goods, execution shall be made against them by reason of their plea, and consequently, according to the Statute, against all the others who do not appear. But if an executor plead that he has fully administered, and be at issue

do right.

It was said that execution on the plea that was pleaded shall be made of their own goods, because the one who pleaded answered, and denied the deed of his testator, accepting as a fact that he had assets of the goods of the deceased.

No. 1.

le pount² redresser deux mesmes.—*Sed*³ *R.*⁴ *Thorpe* A.D. 1348
*dit*⁵ qe pur ceo qe les autres executours ne furent de fere
pas parties al plee qe les Justices ne les⁶ escoterent⁷ dreit.
pas a ceste chose chalanger saunz bref de la Fuit dit qe
Chauncellerie.—*HLL.* Nostre jugement, qest entre execucion
en rouble, est garranti del estatut, qe voet qe juge- sur le plee
ment se face des biens le testatour vers touz qest
generalment, auxi bien vers ceux qe ne veignent plede
pas come vers ceux qe pledent, et covient faire⁸ serra fet
execucion acordaunt.—*R. Thorpe.* Lestatut est fait de lour
en avantage le pleintif pur escraser⁹ proces,¹⁰ et¹¹ respondi, plede
voet qautiel jugement se face vers ceux¹² qe ne le fet son
vieignent¹³ pas a la Graunt Destresse come vers ceux testatour,
qe pledent. Et *certum est* qe par comune ley, quant accep-
executours pledent et dedionnt le fait lour testatour, taunt qil
ils pledent come ceux qount assetz des biens lour¹⁴ avoit assez
testatour; par quei, si trove soit countre lour mise, de biens le
jugement se fra vers eux generalment par comune mort.¹⁵
ley,¹⁵ issint qen tiel cas, tut neient ils rienz des
biens lour testatour,¹⁶ execucion par lour plee se fra
vers eux, et *per consequens* par Statut vers touz les
autres qe ne vieignent pas. Mes si executour¹⁷ plede
qil ad¹⁸ pleinement administre,¹⁹ et sur ceo soit a

¹ The marginal note subsequent to the word Dette is from 25,184 alone. There is a different marginal note of some length in L., but it has been partly cut away in binding.

² L., puissent.

³ L., mes; the word is omitted from 25,184.

⁴ R. is omitted from L. and 25,184.

⁵ *dit* is omitted from L.

⁶ les is omitted from L.

⁷ 22,552, escutirent.

⁸ 22,552, ils nous feront, instead of covient faire.

⁹ L., exscurser; 22,552, esturser.

¹⁰ proces is omitted from 22,552.

¹¹ 25,184, qe.

¹² L., eux; the word is omitted from 22,552.

¹³ L., veignount; Harl., veignent; 22552, venent.

¹⁴ Harl., le.

¹⁵ The words par comune ley are from 25,184 alone.

¹⁶ 22,552, and 25,184, le mort; Harl., le testatour, instead of lour testatour.

¹⁷ Harl., lexecutour; in L., the whole sentence is in the plural.

¹⁸ ad is omitted from 22,552.

¹⁹ Harl., ministre.

No. 2.

A.D. 1843. thereupon, and it be found that he has not fully administered, he shall be charged in accordance with that which he had of the goods of the deceased on the day of the purchase of the writ.—[*W.*] *Thorpe*. Then, according to your contention, an executor who appears, even though himself and the others had nothing, will charge those who do not appear by his false plea.—*Pulteney*. But suppose, on the other hand, that the other executors who did not appear in Court had assets on the day of the purchase of the writ and sold them, pending the writ, and one appeared who had nothing, and pleaded, and denied his testator's deed, and the finding were against him; if the judgment were not general against all, as well in respect of their own goods as in respect of the other goods, then it would follow that by their covin and consent the plaintiff would be ousted from execution where they are chargeable by law.—[*W.*] *Thorpe*. He would not be, because in the case that you have put, if the Sheriff returned that they had nothing in their hands of the goods of the deceased, he would, by a *testatum est*, have execution of that which they had on the day of the purchase of the writ.—*Quere* nevertheless, in case the goods have been sold.—And see the Statute for the form of the judgment.¹

Trespass brought against a man by a (2.) § A woman brought a writ of Trespass against a man, who alleged that the woman who was plaintiff heretofore in Court Christian proved himself against

¹ See further, in relation to this or a similar case, Y.B. Mich. 17 Edw. III., No. 3.

No. 2.

issue,¹ et trove est qil nad pas pleynement² administré, A.D. 1343. il serra charge solonc ceo qil avoit des biens le mort jour du bref purchace.—*Thorpe*. Donques, a vostre entente, un executour qe vendra, et mesqe il mesme et les autres navoient rienz, il les chargera³ qe ne veignent pas par son faux⁴ plee.—*Pult.* Mes⁵ mettez arremeyn qe les autres executours qe ne veignent pas en Court⁶ ussent assetz⁷ jour du bref purchace et les vendissent,⁸ pendaunt le bref, et un venist qe⁹ navoit rienz, et pledast, et dedit le fait soun testatour, et trove fut¹⁰ countre luy, si le jugement ne fut general¹¹ vers touz, auxi bien de lour propres¹² biens come des autres biens, donques ensuerait qe par lour covyn et assent qe le pleintif serreit oste dexecucion la ou ils sont chargeables de ley.¹³—*Thorpe*. Noun serroit¹⁴ pas, qar en le cas qe vous avez mys, si le Vicounte retourna qils navoient¹⁵ rienz entre meyns des biens le mort, par *testatum est* il averait execucion de ceo¹⁶ qils avoint jour du bref purchace.—*Quære tamen* en cas qe les biens soient vendus.—*Et vide Statutum pro forma*¹⁷ *judicii*.

(2.)¹⁸ § Une femme porta bref de Trespas vers Trespas un homme, qe alleggea qe la femme pleintif¹⁹ vers un autrefoitz en Court Christiène derena luy mesme vers par une

¹ L., issu soit prise, instead of soit a issue.

² pleynement is from L. alone.

³ L., chargea; Harl., charge.

⁴ L., feynt.

⁵ Mes is omitted from L. and 25,184.

⁶ The words en Court are omitted from Harl.

⁷ assetz is omitted from L.

⁸ 25,184, demeissent.

⁹ 25,184, et.

¹⁰ L., soit, 22,552 fuist.

¹¹ L., se fra generalment, instead of fut general.

¹² propres is omitted from L.

¹³ Harl., luy.

¹⁴ So in L.; the other MSS., serrount.

¹⁵ L., qil navoit, instead of qils navoient.

¹⁶ L., de bienz, instead of execucion de ceo.

¹⁷ 22,552, and 25,184, *per formam*, instead of *pro forma*.

¹⁸ From L., Harl., 22,552, and 25,184.

¹⁹ pleintif is from 22,552 alone.

No. 3.

A.D. 1343. whom the writ is brought to be her husband, and so woman. she is not entitled to an answer from him.—To this
The man alleged that he had proved the same person to be his wife in Court Christian. *Grene* said that it is not a plea, unless he say that she is his wife, against which she is ready to maintain that she is sole.—*Thorpe*. We plead in law, and we have shown how she is covert, and that we will aver wheresoever we ought to aver it, and in respect of that estate a woman would be dowable; consequently she is not entitled to an answer.—*Blaykestone*. I fully grant you that she would be dowable on a writ of Dower, because such a matter would in that case be triable by the Bishop; but on this writ the issue must be taken whether she be covert or sole, as it seems.—And nevertheless there were some who said that she is not dowable in the case put.—And afterwards *Thorpe* would not abide judgment, but said: Not Guilty; ready, .&c.—And the other side said the contrary.

Quare incumbravit, in which a party could not have a Day of Grace. (8.) § Theobald de Greneville brought a *Quare incumbravit*, returnable on the Quinzaine of Easter, against the Bishop of Exeter, on the recovery of the presentation to the church of Kilkhampton, as appears in last Hilary Term¹; and he could not have a day in the same Term on the Bishop's default, because the Statute² speaks only of *Quare impedit* and Assise of Darrein Presentment.—See more below.³

¹ No. 12 (pp. 40-80).

² 52 Hen. III. (Marlb.) c. 12.

³ The proceedings in Error on the recovery in Assise of Darrein Presentment follow (No. 4). The

continuation of the proceedings in *Quare incumbravit* does not appear before Michaelmas Term Nos. 21, 34, and 109 (old numbering).

No. 3.

qi le bref est porte come soun baroun, issint est A.D. 1343.
 ele nient responsable vers luy.—A quei² Grene dit femme.
 qe ceo nest pas plee sil ne die qele est sa femme, Le homme
 countre quei ele est prest de meyntener qe sole.—allegea qil
 Thorpe. Nous pledoms en ley, et avoms moustre avoit
 coment ele est coverte, quele chose nous voloms derens
 averer ou averer le devoms,³ de quel estat femme mesme
 serreit⁴ dowable; *per consequens* nient responsable.—cele come
 Blayk. Jeo vous graunte bien⁵ qele serreit⁶ dowable en Court
 a un bref de Dowere, pur ceo qe tiel chose illoeqes⁷ Christi-
 serreit triable par Evesqe; mes en ceo bref il covient ene.¹
 prendre lissue le quel ele soit coverte ou sole, a ceo
 qe semble.—*Et tamen aliqui dicebant* qele nest pas
 dowable en le cas.—Et puis⁸ Thorpe ne voleit pas
 demurer, mes dit de rien coupable; prest, &c.—*Et*
alii e contra.

(3.)⁹ § Thebaud Greneville porta *Quare incumbravit*, *Quare in-*
 retournable a la xv de Pasche, vers Levesqe Dexcestre, ou partie
 sur le recoverir del presentement al eglise de Kilk- ne puit
 hamptone, *ut patet Hillarii ultimo*¹¹; et il ne put aver jour
 aver jour mesme le Terme sur la default Levesqe, de grace.¹⁰
 pur ceo qe Statut parle forsque de *Quare impedit*.
 et Assise de¹² Derreyn Presentement.—*Vide plus*
*infra.*¹³

¹ The marginal note is from 25,184 alone.

² The words A quei are omitted from L. and Harl.

³ The words ou averer le devoms are omitted from L. and Harl., but in Harl. the words &c., et are substituted.

⁴ L., and Harl., serra.

⁵ bien is from L. alone.

⁶ L., and Harl., qe la femme serra, instead of qele serreit.

⁷ L., qil allegea.

⁸ The words et puis are omitted from L.

⁹ From L., Harl., 22,552, and 25,184.

¹⁰ The marginal note is from 25,184 alone.

¹¹ Y.B., Hil. 17. Edw. III., No. 12 (pp. 40-80).

¹² The words Assise de are from L. alone.

¹³ The words *Vide plus infra* are from L. and Harl., alone.

No. 4.

A.D. 1343. (4.) § John de Ralegh and Amy his wife brought a writ of Error returnable now, on the Quinzaine of Easter, against Theobald de Greneville, on the Assise of Darrein Presentment which was pleaded above in Hilary Term.¹—And note, as appears there, that the record was sent into the Chancery notwithstanding that the Assise remained to be taken in respect of damages.—And, when the record came into the Chancery, PARNING, then Chancellor, delivered it with his own hand, without a writ of *Mittimus* to W. Scor, Chief Justice of the Court of King's Bench; and the record was endorsed to that effect; and therefore this was accepted as a sufficient warrant.—*Notton* assigned the errors: that whereas the defendant pleaded in bar of the Assise, and the plaintiff made himself a title, the Justices, as appears by the record, took for cause of judgment that the last presentation acknowledged was not an usurpation (which matter was not submitted to their judgment) without adjudging to whom of right it belonged to present on the matter pleaded and acknowledged. Another error was in that they

First
Error.

¹ Above pp. 40-80. (No. 12.)

No. 4.

(4.) ¹ § Johan de Raly² et Amye³ sa femme A.D. 1843. porterent bref derroure retournable al xv de Pasche ^{Erreur.} a ore vers Thebaud Greneville sur lassise de Derreyn Presentement qe fut plede *supra*, *Termino Hillarii*.—*Et nota, ut patet ibidem*, qe le recorde fut maunde en Chauncellerie *non obstante* qe lassise remist a prendre des damages.—Et quant le recorde vint en Chauncellerie, *PARN.*,⁴ adonques⁵ Chaunceler, le livra de sa mayn demene⁶, saunz bref de *Mittimus*, a W. Scor, Chief⁷ de la place le Roy; et issint⁸ fut le recorde endosse⁹; par quei ceo fut accepte pur suffisaunt garraunt.¹⁰—*Nottone* assigna les erreurs: *Primus Error.*¹¹ qe la ou le defendaut pleda en barre dassise, et le pleintif se fist title, les Justices¹² come piert par le recorde, pristrent pur cause de jugement¹³ qe le derreyn presentement conu ne fut pas purprise, quele chose ne fut pas mys en lour jugement, saunz agarder a qi de¹⁴ dreit appendoit¹⁵ a presenter sur la matere plede et conu.¹⁶ Un autre erreur de ceo qil

¹ From L., Harl., 22,552, and 25,184, until otherwise stated, but corrected by the record *Placita coram Rege*, Easter 17 Edw. III., R^o 29. The writ of Error was brought by John de Ralegh and Amy his wife, the defendants in the previous Assise of Darrein Presentment, against Theobald de Greneville, the plaintiff in the Assise.

² L., Rale.

³ L., M.

⁴ L., *PARNEN*.

⁵ adonques is from L. alone.

⁶ demene is from L. alone.

⁷ Chief is omitted from Harl.

⁸ L., issint qe.

⁹ This appears on the roll:—
"Qua recordum et processus
liberabantur Willelmo Scot in
"Banco per manus Roberti Par-

"nyng Cancellarii." The record was thus apparently delivered to Scot while on the Bench of his Court.

¹⁰ L., recorde.

¹¹ The marginal note is from Harl. alone.

¹² 25,184, Ustis, instead of les Justices.

¹³ L., matere de jugement.

¹⁴ L., le.

¹⁵ Harl., appendist.

¹⁶ The first assignment of error was, according to the roll, "quod
"ubi per prædictum recordum et
"processum manifeste patet quod
"præfati Justiciarii sumpserunt pro
"causa iudicii sui in hac parte
"reddendi præsentationem præfato
"Thomæ de Stapeltone factam per
"prædictum Henricum de Grene-
"ville fuisse in vera possessione
"ejusdem Henrici, et non per

No. 4.

A.D. 1343. adjudged that by the husband's alienation of one acre of meadow and of the advowson, which before the demise was admitted to be appendant to the whole manor, of which the wife is seised, the advowson became appendant to the acre alone, and did not remain appendant to the whole manor, whereas by law no one could make it disappendant except one who had right therein. Another error was in that it was acknowledged that a third part of the manor to

Second
Error.

Third
Error.

No. 4.

agarderent³ par lalienacion le baroun dune³ acre de pree et de lavoessoun, qe avant la⁴ demise fut conu destre⁵ appendant a tout le⁶ maner, de quel la femme est seisi, qe ceo devient appendant soulement al acre, et ne demura⁷ pas appendant al maner entier, la ou par ley nul homme le purreit faire desappendant forsqe celui qe droit en avoit.⁸ Un autre de ceo qe conu fut qe la tierce partie du maner

A.D. 1848

Secundus
Error.¹Tertius
Error.¹

"usurpationem, supponendo præfatos Johannem et Amiam morasse præcisè inde in iudicio ad probationem præsentationem illam fuisse per usurpationem, ubi, post hoc quod præfatus Theobaldus sibi fecerat titulum ad habendam assisam contra illud quod placitatum erat in exclusione ejusdem Assisæ, præfati Johannes et Amia morati fuerunt in iudicio super materia ex utraque parte placitata si ad ipsos modo non attinet præsentandi ad ecclesiam prædictam. Et sic in hoc quod præfati Justiciarii reddiderunt iudicium suum super alia causa erraverunt."

¹ The marginal note is from Harl. alone.

² L., and Harl., allegges.

³ L., and Harl., del.

⁴ L., lavoessoun quaut, instead of avant la.

⁵ destre is omitted from L., and Harl.

⁶ L., and Harl., al, instead of a tittle.

⁷ L., demorra.

⁸ The second assignment of error was, according to the roll, "quod ubi prædictus Theobaldus nitebatur se ad habendam assisam, &c., super præsentatione facta præfato Thomæ de Stapeldone per prædictum Henricum de

"Greneville patrem, &c., ad quod prædicti Johannes et Amya placitaverunt in exclusione ejusdem Assisæ ostendendo advocacionem prædictam fore pertinentem præfato manerio de Kylkhamptone tempore Ricardi de Greneville, et postea tempore prædicti Bartholomæi de Greneville, et qualiter idem Bartholomæus se dimisit integre de eodem manerio ut in dominico et reversione, et postea resumpsit statum inde sibi et præfatis Amyæ per finem prædictum, et qualiter eadem Amia statum illum continuavit usque nunc, et quod eadem præsenoio [sic] facta præfato Thomæ de Stapeldone fuit dum eadem Amia co-operta fuit de præfato Bartholomæo, prout expresse patet in recordo et processu prædictis, et prædictus Theobaldus fecit sibi titulum per feoffamentum prædicti Bartholomæi de prædictis acra prati et advocacione factum præfato Henrico, et alium titulum sibi non fecit, non dedicando illud quod præfati Johannes et Amia prius placitaverant in exclusionem Assisæ prædictæ, et sic in hoc quod præfati Justiciarii consideraverunt quod prædictus Theobaldus recuperaret præsentationem prædictam, supponendo

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A.D. 1843. which, &c., together with the third turn to present, was assigned to Katharine wife of Richard de Greneville, wherefore even though severance of the advowson from the manor by the alienation might be adjudged, yet the turn of Katharine, who survived the husband that aliened, was revertible to the husband and wife, as appears by the plea pleaded, and the presentation from which they took their title was the third after the assignment of dower, which presentation could not be a title for them. Besides, when the parties abode judgment on all that had been pleaded, and the release of the plaintiff's ancestor was pleaded in bar, and that was not denied, having been made to the first husband and Amy, tenants of the third part of the manor assigned to Katharine in dower, and

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a quei, &c., ove le tierce tourne de presenter, fut A.D. 1343. assigne a Katherine femme Richard Greneville, par quei tout put par lalienacion severaunce estre ajugge¹ del avoesoun del maner, unqore le tourne [Katherine, quele survesquist le baroun qe aliena, fut revertible al baroun et a la femme, come piert par le plee plede, et le presentement]² dount ils pristrent lour title, fut le tierce apres lassignement de dowere, quel presentement ne put estre title pur eux.³ Ovesqe ceo, quaut les parties demurerent en jugement sour quant qe fut plede, et le relees launcestre le pleintif fut plede en barre, et cel nient dedit, fait al primer baroun et Amye⁴ tenauntz de la tierce partie del maner assigne a K. en dowere, et

"advocationem prædictam ecclesie
"prædictæ per illud feoffamentum
"fore separatam de eodem manerio
"existente in seisina præfatæ
"Amie post mortem prædicti
"Bartholomæi, et hoc virtute
"prædicti finis tempore antiquiore
"levati quam extitit prædictum
"feoffamentum, erraverunt om-
"nino."

¹ L., fait.

² The words between brackets are omitted from 25,184.

³ The third assignment of error appears on the roll in the form following:—"Præterea, quamvis
"advocatio prædicta per prædictum
"feoffamentum posset separari, &c.,
"adhuc tamen, ex quo prædictus
"Theobaldus non dedit assigna-
"tionem de prædicta tertia parte
"ejusdem manerii et tertia parte
"advocationis prædictæ fieri præ-
"fatæ Katerinæ nomine dotis, nec
"concessionem de reversione inde
"factam præfatæ Margaretæ, nec
"attornamentum ejusdem Kater-
"inæ, nec prædictum finem ut

"patet in recordo, &c., per quem
"finem præfata Amia habuit
"reversionem conjunctim cum
"præfato Bartholomæo in vita
"ipsius Bartholomæi, et post de-
"cessum ipsius Bartholomæi seisita
"fuit de eadem reversione, et
"illud idem totum per præfatum
"Theobaldum non extitit deditum,
"et per hoc ostenditur quod
"eadem Amia habuit illud de
"quo præfata Katerina fuit tenens,
"et hoc ad præsentandum in tertia
"vacatione, et ipse Theobaldus
"dixerit eandem vacationem fore
"tertiam vacationem post mortem
"prædicti Ricardi viri prædictæ
"Katerinæ, et sic attinuit eidem
"Amie ad præsentandum ut ad
"tertiam vacationem, per quod
"præfati Justiciarii in hoc quod
"consideraverunt quod prædictus
"Theobaldus recuperaret præsen-
"tationem ad ecclesiam prædictam
"erraverunt."

⁴ L., et sa femme; 22,552, Amie et luy, instead of et Amye.

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A.D. 1343. also tenants of the residue of the two parts of the manor to which, of right, the advowson was appendant, by that deed the right and the possession of the advowson were extinguished in the person of the plaintiff's ancestor, and, notwithstanding this matter, they awarded a writ to the Bishop for him, and therein they erred.—*Pole*. You have no warrant to try this record, for the record is not fully here, because the case is still pending in another Court, and the parties have a day to hear an assise, which is parcel of the record; and, in case you affirm the judgment, you have no warrant to take the assise for damages, because the original is not in this Court.—*Thorpe*. Judgment is rendered on the principal matter, and judgment for damages also in effect, and there is nothing as to which enquiry is to be made except the quantity of the damages; and in *Quare impedit*, and in a writ of Cosinage, and Aiel, &c.,

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auxi tenauntz del remenant des deux parties du A.D. 1343
 maner¹ à quel de droit lavoessoun fut appendaunt,
 par cel fait le droit et la possession de lavoessoun²
 fut esteint en la persone launcestre³ le pleintif, et, *non*
obstante ceste chose, il agarderent bref al Evesqe pur luy,
 en taunt errerount.⁴—*Pole*. Vous navez pas garraunt
 de trier ceo recorde, qar le recorde nest pas pleyne-
 ment icy, pur⁵ ceo qe ceo pent⁶ unqore en autre
 place, et parties ount jour doier une assise, quele
 est parcelle del recorde; et, en cas qe vous affermez
 le jugement, vous navez pas garraunt de prendre
 lassise pur les damages,⁷ qar⁸ loriginal⁹ nest pas
 ceinz.¹⁰—*Thorpe*. Le jugement est rendu sur le
 principal, et le jugement des damages en effect, et
 rien est a enquere¹¹ mes¹² la quantite des damages; et
 en *Quare impedit*, et en bref de Cosinage, et Aiel, &c.,

¹ L., remenant.

² The words de lavoessoun are omitted from L.

³ launcestre is from 22, 552 alone.

⁴ The fourth assignment of error appears on the roll, thus: "Item per prædictum recordum, &c., manifeste probatur quod prædictus Theobaldus non dedixit quin prædicta Amia post levationem prædicti finis statum suum in prædictis duabus partibus manerii prædicti et in reversione tertie partis ejusdem manerii ac tertie partis advocacionis prædictæ continuavit, et sic advocatio ecclesiæ prædictæ integre fuit pertinens manerio prædicto, in cujus seisinâ prædictus Henricus relaxavit &c., per quam relaxationem status ejusdem Henrici de eadem advocacione, si aliquis esset, vestiebatur in persona prædictæ Amiæ, per quod in hoc quod præfati Justiciarii consideraverunt quod præfatus Theo-

"baldus recuperaret præsentati-
 onem suam ad ecclesiam prædic-
 tam contra factum prædicti
 antecessoris sui, quod de eo non
 extitit dedictum, erraverunt om-
 nino."

⁵ 25, 184, puy.

⁶ Harl., fut; 25, 184, post; the words ceo pent are omitted from L.

⁷ The words pur les damages are omitted from Harl.

⁸ 25, 184, contra.

⁹ L., and Harl., le jugement.

¹⁰ There is a plea to the same effect on the roll, but there are added the words "et si videatur Curia quod illud quod mittitur in Curia hic de processu prædicto teneri debet pro recordo, &c., paratus est respondere, &c., salva sibi exceptione prædicta," &c., and Theobald then pleads over in answer to the assignments of error.

¹¹ L., enquerrer.

¹² L., forsque.

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A.D. 1343. if judgment be rendered on default, still enquiry shall be had of the damages; and, notwithstanding that enquiry has not been made as to the damages, error shall be redressed in the principal matter.—*Pole*. That is true; in those cases the original is determined, and the parties have not a day, as we have in this case, on the original writ.—*Moubray*. In the Assise it may be found that the time has passed, and therefore the recovery of damages will be the principal recovery; besides, there may be error in that judgment, because perchance they will adjudge to us more or less damages than they ought, and upon that Error lies, and you ought not to affirm nor to disaffirm by parcels the record which is all one in law.—*Richemunde, ad idem*. In Assise of Novel Disseisin, on a record denied, and adjourned in that case into the Bench, if the party who alleges the record makes default before they give judgment on the principal matter, the Court awards the Assise for damages because the whole shall be one record, and the judgment shall not be rendered by parcels; and now in this case there is no diversity, because on the principal matter and the damages, which are accessories, it is all one judgment and one record, save for the mischief which the Bishop would cause through lapse of time in case judgment were delayed, and for that reason the Court will render judgment first on the principal matter; wherefore since the whole will be only one record, and you have before you only parcel, you cannot listen to Error nor redress it.—*Blaykeston*. On a writ of Aiel, if a party recover by default, and the Court

Note.

Note as to
Novel
Disseisin.

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si jugement soit rendu sur défaut, unqore enquera ^{A.D. 1848.} homme des damages; et, *non obstante* qe les damages ne soient¹ pas enquis, homme redressera lerrour en le principal.—*Pole.* Cest verite; la est original termine,² et parties nont pas jour, come nous avoms ^{Nota.³} en ceo cas, sur le bref original.—*Moubray.*⁴ En Lassise purra estre trove⁵ qe le temps est passe, par quei le recoverir des damages serra le principal recoverir; ovesqe ceo, en cel jugement errour purra estre, qar par cas il nous ajugerount damages plus ou meyns qils ne dussent, et sur cella Errour gist, et vous ne devez pas affermer le recorde, ne desaffermer le par parcelles qest tut un en ley.—*Richem., ad idem.* En Assise de Novele Disseisine, sur recorde dedit, et ajourne en cas en Baunk, si la partie qe lallege⁶ fait défaut avant qils facent jugement du principal, Court agarde Lassise pur damages, pur ceo qe tout serra un recorde, et le jugement noun pas rendu par parcelles; et ore en ceo cas ny ad il pas diversite, qar⁷ sur le principal et les damages, qe⁸ sont accessories, tout est un ^{Nota de Nova Disseisina.⁹} jugement et un recorde, salve pur le meschief qe Levesqe durreit⁹ *per lapsum temporis* en cas qe homme targeast de jugement, et pur ceo¹⁰ Court rendra¹¹ jugement primes du principal; par quei desicome tout serra forsque¹² un recorde, et vous navez¹³ devant vous forsque parcelle, vous ne poietz¹⁴ errour escoter ne redresser.—*Blaik.*¹⁵ En bref daiel, si partie recovere par défaut, et Court maunde a¹⁶

¹ L., and Harl., sont.² L., trie.³ The marginal note is from 25,184 alone.⁴ L., *Mounbray*.⁵ 25,184, trover, instead of estre trove.⁶ L., allege le recorde.⁷ qar is omitted from L.⁸ qe is omitted from 25,184.⁹ L., dirreit.¹⁰ 22,552, puis, instead of pur ceo.¹¹ L., and 22,552, rend; Harl., rente.¹² forsque is omitted from L.¹³ Harl., ne avietz.¹⁴ L., purrez.¹⁵ L., and Harl., BAUK.¹⁶ L., deit, instead of maunde a.

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A.D. 1348. send a writ to enquire as to damages, and it be found that the father survived the grandfather, and nevertheless the Court, by chance, erroneously award damages for the whole time, although it may be done upon execution for the damages, that fact will not prevent one from having a writ of Error on the principal matter, before enquiry is made as to the damages.—*Pole*. I think that is not so; and even were it so, that does not prove the point in our matter, because the parties in our case have a day elsewhere, and they have not in the case which you put; and it is impossible that on one and the same original writ there should be two records in different Courts; and if you take it so generally that after each judgment rendered one shall have a writ of Error, it will then follow that after each award, say of a *Capias*, or a Summons, or a Resummons, one will have a writ of Error. This consequence is false, for one shall not have a writ of Error before the original writ between the parties be determined, and they be without day.—*Scor*. Be it saved to you. Answer, because this is a *Scire facias*; you can say whatever you will.—*Moubray*. You see plainly how we have a day by this *Scire facias*, &c., and this writ must be warranted in the Roll of the Justices, in which roll an award shall be made which may warrant the writ, and your roll, which should warrant this writ, is of the present term, and the writ of *Scire facias* is of older date, and so not warranted by the roll. And we do not understand that you will put us to answer.—*Scor*. When the record was delivered to us, that was the warrant to grant the *Scire facias*, and

Note the
difference.

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enquerrer des damages, et trove soit qe le pere **A.D. 1343.**
 survesquist laiel, et,¹ *non obstante*, Court par cas
 agarde² erroignement damages de tout temps, coment
 qe cele chose purra estre fait sur execucion des
 damages, ceo ne destourbera pas qomme navera bref
 derroure sur le principal avant qe les damages soient
 enquis.—*Pole.* Jeo crey³ qe noun; et tout fut ceo *Nota*
 issint, ceo ne prove pas en nostre matere, qar par- *diversite.*⁴
 ties en nostre cas ount jour aillours, et si nount⁵
 ils pas en vostre cas; et il est impossible qe sur
 un mesme original qe deux⁶ recordes soient⁷ en
 divers places; et si vous pernez si generalment qe
 apres chescun⁸ jugement rendu homme avera bref
 derroure, donques ensuera⁹ qapres chescun agarde, saver
Capias, ou Somons, ou Resomons, homme avera bref
 derroure. *Consequens falsum*, qar homme nel avera pas
 avant qe loriginal soit termine entre les parties, et
 qils soient saunz jour.—*Scor.* Salve vous soit. Re-
 spondez, qar cest un *Scire facias*; vous poietz dire
 quant qe vous voillez.—*Moubray.*¹⁰ Vous veiez bien
 coment nous avoms jour par cest *Scire facias*, &c.,
 quel bref covient estre garranti en¹¹ roulle des
 Justices, en quel roulle¹² agarde serra fait qe purra
 garrantir le bref, et vostre roulle qe garrantireit ceo
 bref est de cest terme, et le bref de *Scire facias*
 est deigne date, issint nient garranti de roulle. Et
 nentendoms pas qe vous nous voillez mettre a re-
 spondre.—*Scor.*¹³ Quant le recorde nous¹⁴ fut livre,
 ceo fut garraunt de graunter¹⁵ *Scire facias*, et noun

¹ et is omitted from L.² 22,552, agardera.³ L., crai; 22,552, croi; 25,184, crei.⁴ The marginal note is from 25,184 alone.⁵ 25,184, ny ount, instead of si nount.⁶ Harl., divers.⁷ L., isoient.⁸ chescun is omitted from L., and Harl.⁹ L., ensuist; Harl., ensuyt.¹⁰ L., *Mounbray*.¹¹ 22,552, de.¹² L., de quel, instead of en quel roulle.¹³ L., *Thorpe*.¹⁴ nous is omitted from L.¹⁵ L., garranti le, instead of fut garraunt de graunter.

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A.D. 1343. not our roll; and it is not the practice in this Court to enter the record which is sent by way of Error before the parties have a day by *Scire facias*, and be in Court, or else until the Court can proceed to try the trial of the errors on default.—*Pole*. That cannot be so, because the writ of *Scire facias* must in this case be under the witness of the Chief Justice, and the number of the roll upon which the writ issues must be put in the writ; and, besides, the Court will not grant the writ before error be assigned—before the party have assigned error—which must be entered upon the roll, and upon that the award of the writ will be made, which award will warrant this *Scire facias*, and that could not be if it were not entered.—*BASSET*. What is said as to error shall not be entered before the *Scire facias* issues, though error be previously assigned by way of form.—*Scot*. Answer; it shall be saved to you.—*Pole*. As to that which they say concerning the errors, except one, namely, as to whether the advowson was severed by the alienation from the rest of the manor, and made appendant to the acre of meadow, we have nothing to do with it, because it was never charged in the plea. And as to the point touching the severance no one can prove that the advowson was not severed by the husband's alienation, for the husband could well aliene, and sever, and make the advowson appendant to the parcel during the coverture (and put the woman to her action by *Cui in vita*) just as the woman could have done if she had been

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pas nostre roulle; et homme nuse pas ceinz dentrer A.D. 1343.
 le recorde qest maunde par voie derroure avaunt qe
 les parties eient jour par *Scire facias*, et soient en
 Court, ou autrement qe par default Court puisse aler
 al triement des erreurs.—*Pole*. Ceo ne poet estre,
 qar le bref de garnisement en ceo cas covient estre
 desouth¹ tesmoignaunce del Chief Justice, et le
 noumbre de roulle dount le bref issit mys el bref;
 et, ovesqe ceo, avaunt qe errour soit assigne, Court
 ne grantera pas le bref, [devant qe partie eit assigne
 errour],² quel covient estre entre en roulle, et sur
 ceo agarde serra fait, quel agarde garranterà ceo³
Scire facias, qe ne put estre sil ne fut entre.—
 BASSET. Ceo qe homme parle derroure ne serra pas
 entre devant qe *Scire facias* isse, tout lassigne homme
 par voie de⁴ fourme devant.—*Scor*. Responez; salve
 vous serra.—*Pole*. Quant a ceo qils parlent⁵ des
 erreurs, salve un, saver, le quel lavoiesoun fut severe
 par⁶ lalienacion [du remenant del maner, et fait
 appendaunt al acre de pree, nous navoms qe faire,
 qar ceo ne fuit unqes charge en plee.⁷ Et quant a
 cel point de la severaunce nul homme⁸ put⁹ prover¹⁰
 qe ceo nestoit severe par lalienacion]¹¹ le baroun,
 qar bien put le baroun alier et severer, et la
 faire¹² appendaunt a la parcelle duraunt la cover-
 ture, et mettre la femme a saccion par *Cui in vita*,
 come la femme le put aver fait si ele ust este

¹ Harl., south; 22,552, en; 25,184, sanz.

² The words between brackets are omitted from L. and 22,552.

³ L., and Harl., le.

⁴ The words voie de are omitted from L., and 25,184.

⁵ L., qil pleynt, instead of qils parlent.

⁶ L., par my.

⁷ L., ne paroul; Harl., ne parle, instead of en plee.

⁸ homme is omitted from L.

⁹ L., la put.

¹⁰ 25,184, ne prove, instead of put prover.

¹¹ The words between brackets are omitted from 22,552.

¹² L., faire estre.

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A.D. 1843. sole ; wherefore in this respect the judgment is good.

—*Thorpe*. When an advowson is appendant, by right, to a manor, no one can sever it and make it appendant to a parcel except the person who can do so by right, so that he can make it by right and in fact appendant to the parcel ; now the case is such that the

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sole; par quei en cel le jugement est bon.¹— A.D. 1343.
Thorpe. Quant avoesoun est appendaunt de dreit
 a un maner, nul homme ne la poet severer et faire
 lappendaunce a la parcelle forsque celui qe de dreit
 le poet faire, issint qil le face de dreit et de fait
 appendaunte a la parcelle; ore est il issint qe le

¹ According to the record the defendant pleaded *seriatim* to the four assignments of error, reciting the substance of each in turn.

To the first assignment he pleaded "Non erraverunt, quia
 " dicit quod præfati Johannes et
 " Amia in responsione sua ad exclu-
 " dendum Assisam prædictam plura
 " diversa allegarunt, videlicet as-
 " signationem prædictæ dotis præ-
 " fatis Katerinæ factam, et etiam
 " feoffamentum duarum partium
 " manerii prædicti una cum rever-
 " sione dotis prædictæ, &c., præfatis
 " Margaretæ factum, ac attorna-
 " mentum præfatis Katerinæ, &c.,
 " prædictumque finem inde postea
 " levatum, ac relaxationem et re-
 " missionem prædictas præfatis
 " Amiæ per prædictum Bartholo-
 " mæum fieri, sed ad finem
 " fecerunt ipsi Johannes et Amia
 " conclusionem suam scilicet
 " quod prædicta ultima præsentatio
 " ad ecclesiam prædictam facta
 " præfato Thomæ de Stapeldone
 " per præfatum Henricum fuit
 " quædam usurpatio super præfa-
 " tam Amiam adtunc viro co-
 " opertam, &c., quod tantum fuit
 " responsum, ad quod ipse Theo-
 " baldus ponebatur ad responden-
 " dum, qui respondit et probavit
 " quod eadem præsentatio non fuit
 " usurpatio, immo præsentatio
 " veri patronis [sic], per quod
 " præfati Justiciarii consideraver-
 " unt quod ipse Theobaldus ha-

" beret breve Episcopo, &c., et sic
 " præfati Justiciarii in hoc non
 " erraverunt, immo rite fecerunt,
 " quia quamvis aliquis defendens
 " in hujusmodi Assisa, &c., plura
 " allegaverit ad jus suum ostenden-
 " dum pro breve Episcopo habendo,
 " &c., et ultimam præsentationem,
 " &c., evacuat, tamen oportet
 " querenti semper manutenere
 " ultimam præsentationem, absque
 " hoc quod teneatur respondere ad
 " jus defendentis," &c.

To the second assignment he pleaded "quod præfati Justiciarii
 " in hoc non erraverunt, quia dicit
 " quod, feoffamento prædicto in ro-
 " bore suo permanente, prædicta
 " advocatio ecclesiæ prædictæ non
 " potest esse pertinens manerio
 " prædicto, immo separata de
 " eodem, et pertinens prædictæ
 " acræ prati de qua idem Theo-
 " baldus extitit seisisus, et sic in
 " hoc quod præfati Justiciarii con-
 " sideraverunt quod idem Theo-
 " baldus recuperaret præsentati-
 " onem suam ad ecclesiam prædic-
 " tam non erraverunt, immo rite
 " et legitime fecerunt."

To the third assignment he pleaded "Non est erratum, quia
 " dicit quod quamvis præfati
 " Johannes et Amia præmissa
 " dixerunt in responsione sua,
 " tamen ipse Theobaldus in nullo
 " tempore super his extitit onera-
 " tus, nec per viam rationis inde
 " onerari debuisset, per quod ea de

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A D. 1343. husband could not do this, or at most only so that it could be in that condition for them for the time of the coverture alone, so that with respect to the parcel the case is now such that of right the appendance remained to the manor; and if the advowson had been in gross it is clear that the woman would not be out of possession through the husband's alienation, nor consequently in the present case. And as to the other errors—as to the ancestor's release, and as this being now the third turn, which we say ought to belong to us who hold, by reason of reversion, that which Katharine wife of Richard de Greneville held in dower at the time of the alienation, from which he supposes that he is discharged, it is not so, because you will find by the record that we never waived it,

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baroun nel put faire, a meuth¹ qe purreit estre pur A.D. 1343.
 eux forsqe pur temps de la coverture, issint qe [de
 la parcele ore est il issint qe]² de dreit lappen-
 daunce demura al maner; et si ele ust este gros,³
constat qe par lalienacion le baroun la femme ne
 serra pas hors de possessioun *nec per consequens* a
 ore. Et quant as autres erreurs, del relees launcestre,
 et qe cest ore le tierce tourn, qe nous dioms qe
 dust appendre a nous qe tenoms,⁴ par cause de re-
 version, ceo⁵ qe K. la femme R.⁶ G. tient en dower
 al temps del lalienacion, dount il suppose estre⁷
 descharge, il nest pas issint, qar vous trovez
 par le recorde qe unques nel weyvames,⁸ mes primes⁹

" ipso Theobaldo non potuerunt
 " teneri quasi non dedita qualiter-
 " cumque prefati Johannes et
 " Amia ea ipsi Theobaldo impos-
 " uerunt, immo placitaverunt ad
 " predictam ultimam presenta-
 " tionem evacuandam, ad quod
 " ipse Theobaldus respondit, et sic
 " in hoc quod prefati Justiciarii
 " consideraverunt quod ipse Theo-
 " baldus recuperaret presentatio-
 " nem suam ad ecclesiam predictam
 " tam super predicto placito placi-
 " tato, non habito respectu ad
 " illud quod non erat sumptum
 " pro placito nec ad illud quod
 " ipse Theobaldus non potuit
 " habuisse responsum, non erra-
 " verunt, immo iudicium rectum
 " et legitimum fecerunt."

To the fourth assignment he
 pleaded " in hoc non erraverunt,
 " quia dicit quod predictum fac-
 " tum predicti Henrici nunquam
 " erat expresse usitatum in exclu-
 " sionem predictæ Assisæ contra
 " ipsum Theobaldum, nec ad illud
 " ipse Theobaldus ponebatur res-
 " pondere, nec debuit de jure, eo
 " quod predicti Johannes et Amia
 " evacua-verunt predictam ultimam

" præsentationem quam ipse Theo-
 " baldus sumpsit pro titulo suo,
 " quem titulum prefati Justiciarii
 " tanquam bonum manutenuerunt,
 " prout debuerunt, in hoc quod
 " consideraverunt quod ipse Theo-
 " baldus recuperaret præsentatio-
 " nem suam ad ecclesiam prædic-
 " tam, non habito respectu ad
 " prædictum factum prædicti Hen-
 " rici, ad quod factum ipse Theo-
 " baldus nunquam ponebatur res-
 " ponsurus, nec prefati Johannes
 " et Amia illo, aliquo tempore,
 " utebantur ut in exclusionem
 " Assisæ prædictæ, et sic iidem
 " Justiciarii in redditione iudicii
 " prædicti in nullo erraverunt, sed
 " rite et legitime fecerunt."

¹ All the MSS. except L., al
 meyns, instead of a meuth.

² The words between brackets
 are from 25,184 alone.

³ Harl., seisi.

⁴ The words qe tenoms are
 omitted from L.

⁵ L., qe nous tenoms ceo.

⁶ R. is omitted from L.

⁷ 25,184, destre.

⁸ L., veiivames.

⁹ L., prisoms; 25,184, proenoma.

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A.D. 1343. but took all these points in aid of our title, and upon the non-denial of that particular point, as well as of the rest, we prayed judgment. And the law is such, when a party charges two or three matters, and puts them on judgment, and is not ruled by the Court nor compelled by the party to hold to one certain point, that he shall be aided by the whole. So in the matter before us. Then you see clearly that by the release of his ancestor, through whom he claimed, made to us while we held the third part of the advowson, which third part Katharine, tenant in dower, previously held in our right, even though he had had anything in the advowson through the husband's alienation, which could be, for him, at most only two parts, yet his ancestor divested himself by the quit claim, and this deed was not denied by him. Therefore, in that they proceeded to judgment for him, contrary to this admitted deed, the Justices erred entirely.—And *Thorpe* said afterwards in the plea, in order to strengthen this point, that if an advowson descend to two parceners, and usurpation be made upon one of them, and afterwards she upon whom the usurpation is made die without issue, by reason whereof her right descends to her co-parcener, notwithstanding the usurpation the latter is tenant of the entirety of the advowson, because she has the right, and she cannot have an action for parcel of the

See as to
usurpa-
tion on a
parcener
when she
holds an
advowson
in parcen-
ary.

No. 4.

touz ces points en eide de nostre tite, et sur cel A.D. 1343.
 nient dedit sibien come del remenant priames¹
 jugement. Et la ley est tiel, quant partie charge ij
 choses ou iij, et les mette en jugement, et nest pas
 roulle² par Court ne chace par³ partie de prendre
 a un certain poynt,⁴ il serra eide par tout. *Sic in*
proposito. Donques vous veiez overtement qe⁵ par
 relees soun auncestre, par qi il clama,⁶ fait a nous
 quant nous tenimes⁷ la tierce partie [de lavoessoun,
 quele tierce partie]⁸ K. tenants en dower, tient
 adevant en nostre dreit,⁹ qe tut ust il eu par
 lalienacion le¹⁰ baroun rien en lavoessoun, qe ne
 purreit estre a meutz¹¹ pur luy forsque les¹² deux¹³
 parties, unqore son auncestre par la quitelamance¹⁴
 se demist, et cel fait¹⁵ fut nient dedit de luy. Par
 quei, de ceo qils alerunt a jugement pur luy, cowntre
 cel fait conu, ils errerunt tout suis.¹⁶ [—Et¹⁷ *Thorpe*
*dist puis*¹⁸ en le plee pur afforcer¹⁹ cel point, qe si
 une avoessoun descend a deux parceners, et purprise
 soit fait sur lun, et puis cele²⁰ sur qi la purprise
 est fait moert²¹ sanz issue, par quei soun dreit
 descend a sa parcenere qe *non obstante* la purprise
 ele est tenaunte del entier del avoessoun pur ceo
 quele ad dreit, et ne poet aver accion de parcelle del

Vide de
purprise
sur
parcenere
quant ele
tint une
avowe-
soun
en parcen
*erie.*²²

¹ L., and Harl., priassoms.

² 22,552, rolle; 25,184, reulle.

³ The words chace par are from L. alone.

⁴ poynt is from L. alone.

⁵ L. and Harl., bien coment instead of overtment qe.

⁶ L., et quiteclamance, instead of par qi il clama.

⁷ L., tenissoms.

⁸ The words between brackets are omitted from L.

⁹ The words nostre dreit are omitted from 25,184.

¹⁰ L., and Harl., soun.

¹¹ All the MSS. except L., au meyns.

¹² L., en les.

¹³ deux is omitted from L.

¹⁴ 25,184, lacquitaunce instead of la quitelamance.

¹⁵ 22,552, foiz.

¹⁶ 22,552, suyz; L., and Harl., &c.

¹⁷ Et is from 25,184 alone.

¹⁸ L., plus.

¹⁹ L., forcer.

²⁰ L., ele.

²¹ L., muret; 25,184, est mort.

²² The marginal note is from 25, 184 alone.

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A.D. 1343. advowson and be seised of the residue herself ; nor here in the matter before us. Also you see plainly in the record that we spoke of two presentations, and we avoided their presentation, and he replied, and as to one presentation, where we supposed that we presented, to wit, W. Keynes, he traversed it, so that by him, as well as by us, it was admitted that this was now the third turn since the assignment made to Katharine, tenant in dower, to which Katharine, if she were still living (even though you were to adjudge that the advowson was appendant to the acre of meadow) it would belong to present, because, notwithstanding the alienation, she would have the third part of the advowson, and consequently we, who have the same estate, after her death, by way of reversion, shall have the same turn, and this is not denied by him, &c.—*Pole*. That was never charged in the plea nor in the judgment, for even though one speaks of divers matters, and puts one certain point on judgment, on that point and on no other ought the Court and the party to be charged ; but although you spoke of the release and the assignment of dower, you did not abide judgment thereupon, but you abode judgment on the destruction of our title on the ground that it was only an usurpation. And this the record plainly proves, for throughout the plea you claimed the entire advowson, and if you had been aided by the estate of Katharine, tenant in dower, you would have claimed only the third part and the third turn, and that would have been to have

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avoessoun et estre seisi del remenant mesme; *neque* A.D. 1343.
hic in proposito].¹ Auxi vous veiez bien qen le re-
 corde qe nous parlames de deux presentements, et
 voidames lour presentement, [et il replia, et]² quant
 al un presentement qe nous supposoms qe nous
 presentames, saver W. Keynes, il le traversa, issint
 qe de luy qe de nous conu fut qe ceo fut le tierce
 tourn a ore puis lassignement fait a K. tenaunte
 en dowere, a la quele K., si ele fut ore en vie, tout
 fut il issint qe vous ajugeastes qe lavoessoun fut
 appendante al acre de pree,³ appendreit a presenter,
 qar,⁴ *non obstante* lalienacion, ele avereit la tierce
 partie⁵ del avoessoun, et *per consequens* nous averoms
 mesme le tourne⁶ qe avoms mesme lestat apres son
 decees par voie de reversion, et cest chose nient
 dedit de luy, &c.—*Pole*. Ceo nestoit unques charge
 en le plee nen le jugement, qar tout parle homme
 de divers choses, et mette en jugement un certain
 point, sur cel et sour⁷ nul autre deit⁸ Court et
 partie estre charge; mes coment qe vous parlastes
 de relees et assignement de⁹ dowere, vous demurastes
 pas sur cel, mes demurastes en jugement en¹⁰ de-
 struccion de nostre title par taunt qe ceo ne fut
 forsque purprise. Et ceo prove bien le recorde, qar
 en tout le plee vous clamastes lavoessoun entere,
 et si¹¹ vous ussez eide par lestat K., tenante
 en dowere, vous nussez clame forsque la tierce
 partie et le tierce tourn, et ceo ust este unqore

¹ The words between brackets are omitted from 22,552.

² The words between brackets are omitted from L.

³ The words de pree are from L., alone.

⁴ Instead of the words *appendreit a presenter* qar there are in L., the words apres lalienacion *adhuc*,

⁵ Instead of the word *partie* there are in L. the words *tourn del presenter*.

⁶ 25,184, *retourne*.

⁷ *sour* is from L. alone.

⁸ 22,552, *dedit*.

⁹ 25,184, *en*.

¹⁰ L., *sour*.

¹¹ *si* is omitted from 25,184.

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A.D. 1848. still admitted to us a good title in the two parts; but all your pleading was with the object of claiming the entirety, and of disproving all our title, and if you had aided yourselves by Katharine's estate, we should have had a plea to say that we were seised of that portion; on the other hand, if we had been at issue on the presentation of W. Keynes, and the finding had been in our favour, you would never have had any advantage of the rest; nor consequently will you now.—*Thorpe*. The case is not similar; when one takes issue in fact, all that he has pleaded in law on another point is waived; but when one pleads in law, he shall be aided by everything that he has pleaded from which he has not been ousted by Court or by party.—*WILLOUGHBY*. In an Assise of Darrein Presentment one has seen that, when it has been found by the Assise that neither one party to the writ nor the other had a right to present, but a third person, who was not named, that stranger has had a writ to the Bishop. *A multo fortiori* in this case, since such a right was acknowledged, or not denied by plea, to one who is a party.—*Pole*. If he had abode judgment on his right acknowledged, or not denied, your reasoning would be applicable; but since he, being party to me in Court, did not do that, but took another plea to judgment, and abode judgment thereon, he can never by law take advantage thereby. Besides, we made protestation that we did not admit that which he said as to the release or the rest, &c.—*Scor*. Speak to

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daver¹ conu a nous bon² tittle en les deux parties; A.D. 1343. mes tout vostre plee fuit de clamer³ lenter, et desprover tout nostre tittle, et si vous ussez eide par lestat K. nous ussoms eu plee a dire qe nous fumes seisi de cel porcion; dautre part, si nous ussoms este a issue sur le presentement W. Keynes, et trove ust este pur nous, jammes nussez⁴ eu avantage del remenant; *nec per consequens* a ore.—*Thorpe*. *Non est simile*; quant⁵ homme prent issue en fait, quant qil⁶ ad plede [en ley sur autre point est weive⁷; mes quant homme plede en ley, il serra eide par quant qil plede]⁸ dount il nest pas ouste par Court ne partie.—*WILBY*. En Assise⁹ de Derreyn Presentement homme ad vewe qe quant il ad este trove par Assise qe ne lun ne lautre partie au bref¹⁰ avoit droit a presenter, mes la tierce persone qe ne fut pas nome, qe celuy estraunge ad eu bref al Evesqe. A plus fort en ceo¹¹ cas, quant tiel¹² droit¹³ fut conu, ou nient dedit par plee, a celuy qest partie.—*Pole*. Sil ust demure en jugement sour soun droit¹⁴ conu, ou¹⁵ nient dedit, vostre resoun liereit; mes quant il,¹⁶ partie a moy en Court, nel fist pas, mes autre plee prist¹⁷ en jugement, et sur ceo demura, jammes par ley par taunt poet il prendre avantage.¹⁸ Ovesqe ceo, nous fimes protestacion qe nous ne conissames¹⁹ pas ceo qil parla del relees ne le remenant, &c.—*Scot*. Parlez a

¹ daver is omitted from L.

² Harl., le; the word is omitted from L.

³ 25,184, desclamer.

⁴ 22,552, ja ne ussez vous; 25,184 la ne usses vous, instead of jammes nussez.

⁵ All the MSS. except 22,552, qar.

⁶ L., il.

⁷ L., en veyne, instead of est weive.

⁸ The words between brackets are omitted from 25,184.

⁹ 25,184, cas.

¹⁰ The words au bref are from 25,184 alone.

¹¹ L., le.

¹² 22,552, cel.

¹³ 25,184, bref.

¹⁴ 22,552, bref.

¹⁵ 25,184, et.

¹⁶ L., il est.

¹⁷ 25,184, fuit.

¹⁸ The report ends here in 22,552.

¹⁹ L., and 25,184, conissoms.

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A.D. 1343. the point as to how, when by the husband's deed the advowson was severed, and the feoffee was then tenant of the advowson as appendant to the acre, it could, by the husband's death, be rejoined to the manor, having previously been severed. And as to that which you say touching the third part which remained in the tenant in dower, should any one charge that, as perchance we pay no regard to it, still, as some understand, a woman, tenant in dower, is not tenant of any parcel of the advowson, but has a profit, to wit, to present at the third turn, but the advowson remains entirely in the heir.—*Thorpe*. Certainly it does not, for she will recover a third part of the advowson by writ of Dower, so that it is sufficiently acknowledged that she was tenant of the third part, the reversion being to us; and even though there had been right in his ancestor before, it was extinguished by the release. And, to speak to the point touching the severance, we understand it to be certain law that no one can sever an advowson except one who has right therein, by alienation in particular, but he could do so by retention, as if the husband had aliened, by acres, to divers persons, the whole of the manor, save one acre, the advowson would be appendant to that acre, but he could not do so by the alienation of one acre with the advowson if he had not had right.—*Blaykeston*. Suppose that she aliene the rest of the manor, and afterwards recover the acre, with the appurtenances, by *Cui in vita*, will she not recover the advowson as appendant to the acre?—*Thorpe*. She would not do so, for she would not hold it through her

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cel point quant par le fait le baroun lavoësoun fut A.D. 1343. severe, et adonques le feffe fut tenant del avoësoun, com appendant al acre, coment par la mort le baroun ceo purreit estre rejoint al maner qe¹ avant fut severe. Et a ceo qe vous parles de la terce partie qe demura en la tenaunte² en dowere, si homme le chargereit,³ come par cas nous navoms pas regarde a cel, ungore, al⁴ entente dascuns, femme tenaunte en dowere nest tenaunte de nulle parcelle davoësoun, mes ad un profit a presenter al tierce tourn, mes lavoësoun entierement⁵ demœert en leir.—*Thorpe*. Certes noun fait pas,⁶ qar ele⁷ recoversa par bref de Dowere la terce partie del avoësoun,⁸ issi qe assetz est conu qele fut tenaunte de la terce partie, la reversion a nous; et par le relees, tout ust dreit este en soun auncestre adevant, ceo fut esteint par le relees. Et, a parler al⁹ point de la severaunce, nous entendoms pur certain ley¹⁰ qe nul homme poet severer avoësoun forsqe celui qe dreit en ad, nomement par alienacion, mes par¹¹ retenir¹² il put, come si le baroun ust aliene, par acres, a divers persones, tout le maner salve une acre, a cele acre lavoësoun serreit¹³ appendaunte, mes par alienacion dune acre ove lavoësoun nient, sil nust eu dreit.—*Blaik*. Jeo pose qele aliene le remenant du maner, et puis par *Cui in vita* recoversa lacre, ove les appurtenances, ne recoversa ele pas¹⁴ lavoësoun come appendaunte al acre?—*Thorpe*. Noun freit, qar ele ne tendra pas par soun recoverer

¹ L., la ou il, instead of qe.

² L., al tenauntz, instead of en la tenaunte.

³ 25,184, changereit.

⁴ L., qar.

⁵ 25,184, lentier.

⁶ L., nanil, instead of noun fait pas.

⁷ ele is omitted from L.

⁸ The words del avoësoun are omitted from 25,184.

⁹ L., de.

¹⁰ The words pur certain ley are from 25,184 alone.

¹¹ 25,184, a.

¹² L., recoverir.

¹³ L., serra.

¹⁴ pas is from Harl. alone.

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A.D. 1343. recovery otherwise than as it was before the alienation; and put it that the person enfeofed by the husband had not presented during the husband's life, it is certain that, notwithstanding the alienation, the woman would be tenant of the advowson; and even though he did present while the husband was living, which fact could not then be counterpleaded, that does not prove that it was as appendant to the acre, for the advowson by right did not pass except by the word of the husband who could aliene it only for a certain time; and, though there may have been arguments made, our abiding in judgment was whether by the husband's alienation the wife could be put out of possession of the advowson.—Afterwards, in Michaelmas Term in the 18th year, the judgment was affirmed.

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autrement qe ceo ne fut avant lalienacion; et mettez **A.D. 1348.**
 qe le feffe par¹ le baroun nust pas presente en la
 vie le baroun, *certum est* qe, *non obstante* lalienacion,
 la femme serra tenante de lavoessoun; [et] coment
 qil presenta adonques vivaunt le baroun, quele chose
 adonques ne put estre countreplede, ceo ne prove
 pas qe ceo fut² come appendaunt, qar lavoessoun de
 dreit ne passa pas mes par parole³ le baroun qe
 ne la put alierer forsqe pur certain temps; et,
 coment qe arguments soient faitz,⁴ nostre demure⁵
 en⁶ jugement est si⁷ par lalienacion le baroun la
 femme serra mys hors de possession del avoessoun.⁸
 —*Postea, Michaelis xviij^o*, le jugement fut afferme.⁹

¹ par is omitted from L.

² Harl., ne fut.

³ 25,184, de partie, instead of par parole.

⁴ L., isoient, instead of soient faitz.

⁵ 25,184, demoere.

⁶ en is omitted from L.

⁷ Harl., cy.

⁸ The report ends here in 25,184.

⁹ According to the record there was an adjournment from Easter to Trinity Term 17 Edward III. when the King sent a writ close, under the privy seal, to the Justices of the King's Bench. It is set out at length, and is in French. It directs them to proceed to judgment as quickly as possible, because the matter has been long delayed.

There were then successive adjournments to the next Octaves of St. Michael, "quia Curia nondum avisatur," and to the Morrow of St. Martin, when the King sent another writ close to the Justices (in Latin), again directing them to proceed without delay, because it

had been represented to him, on behalf of Theobald, that they were delaying the "finale[m] discussio[n]em negotii," though no errors had been found upon examination of the record and process.

There were then successive adjournments "quia Curia nondum avisatur" to the Octaves of St. Hilary, and to three weeks after Easter, in the 18th year of the reign, when the King sent another writ close (in French), under the privy seal, to the Justices, directing them not further to delay judgment.

There was, however, a further adjournment to the Quinzaine of St. Michael, "quia Curia nondum avisatur."

In the mean time the Assise had found a verdict as to the value of the church. Stonore, Chief Justice of the Common Bench, was directed by writ to have the verdict enrolled, and to send the record and process into the Chancery. It was sent thence to the Justices of the King's Bench. It is set out at length upon the roll, the annual value of

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A.D. 1343. § John de Ralegh and Amy his wife sued a writ to
Error. William Herlaston, Chief Clerk of the Common Bench, to send into the Chancery the record and process of an Assise of Darrein Presentment which there was between the said John de Ralegh of Charles, and Amy his wife, and Theobald de Greneville, before the Justices of the Common Bench. And the said William returned that he could not send the record, because Theobald de Greneville had a writ to the Bishop, and also a writ to the Sheriff to enquire as to the value of the church, and that the inquisition was returnable a month after Easter, and therefore he said that until the inquisition should be returned he could not send the record. And therefore they had another writ out of the Chancery directing that he should send the record, notwithstanding the cause aforesaid, and by virtue of the latter writ he sent the record into the Chancery. And it was sent out of the Chancery into the King's Bench, where they assigned for error that (whereas they showed their right to present, in the Assise of Darrein Presentment, by reason of the seisin of one Richard de Greneville, from whom they made the descent to one Bartholomew, of a manor to which the advowson, &c., which Bartholomew assigned the third part of the same manor with the third turn to present to Katharine wife of the said Richard, and afterwards Bartholomew divested himself of the manor, and took back an estate by fine to himself and Amy his wife, who is now the wife of John de Ralegh who sues this writ, and they said that the presentation from which the plaintiff took his title was an

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§ Johan¹ Raly et Amye sa femme suerent bref a A.D. 1343. William Herleston, Chief Clerk de Comune Baunk, ~~Errour.~~ de maunder le recorde et le proces en Chauncellerie dune Assise de Darrein Presentement, quel fuit entre le dit Johan Raly de Charles, et Amye sa femme, et Thebaud de G. devant les Justices de Comune Baunk. Et le dit William retourna qil ne puit le recorde maunder, pur ceo qe Thebaud de G. avoit bref al Evesqe, et auxi bref al Vicounte denquerer de la value de leglise, quel enqueste fuit retournable al mois de Pasche, par quei il dit qe tanqe lenqueste soit retourne il ne puit le recorde maunder. Par quei ils avoient autre bref² hors de la Chauncellerie qil maunderoit le recorde, *non obstante causa prædicta*, par force de quel bref il maunda le recorde en la Chauncellerie. Et hors de la Chauncellerie il fuit maunde en Bank le Roi, ou ils assignerent pur errour qe par la ou ils moustrerent lour droit de presenter en Lassise de Darrein Presentement par cause de la seisine un Richard³ de G., de qi ils firent la descente a un Barthelmewe, dun maner a quei lavoweson, &c., le quel assigna la tierce partie de mesme le maner ove le tierce tourne de presenter a Katerine la femme le dit Richard,³ et apres Barthelmewe soy demist del maner et reprist estat par fine a luy et a Amye sa femme, qest ore la femme Johan Raly qe suit ceo bref, et disoient qe le presentement de quei le pleintif prist son tittle fuit

the church having been found to be 130 marks, and judgment having been given in the Common Bench for the damages.

At the Quinzaine of St. Michael John de Ralegh and his wife failed to appear in the Court of King's Bench, which Court gave judgment that Theobald should have a writ to the Bishop, and execution for his damages.

¹ This report of the case appears by itself in the old editions as No. 42. Note 4, p. 17 is applicable also to this case.

² The word *bref*, which appears in earlier editions, is omitted from that of 1679.

³ The earliest of the old editions, Henry. The edition of 1679, Henry.

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A.D. 1343. usurpation effected upon Amy when she was covert of Bartholomew, and they said "we do not understand that on such a presentation they can maintain the Assise"), the Justices charged themselves in their judgment solely as to whether the plaintiff's presentation ought to be considered an usurpation upon Amy or not; and because it was considered by them that it was not an usurpation, they awarded a writ to the Bishop for Theobald without having regard to the right of John de Raleigh and Amy his wife, which they had shown by the presentation, &c., and therein the Justices erred. Another error which they assigned was that, whereas the plaintiff claimed the presentation as appendant to two acres of land on the ground that Bartholomew, Amy's husband, enfeofed the plaintiff's father of the same two acres of land and of the advowson, after Amy had a joint estate in the manor to which the advowson, &c., inasmuch as the Justices adjudged that Amy's husband could sever the advowson from the manor by his feoffment while Amy had a joint estate with him, and on that ground awarded a writ to the Bishop for Theobald, the advowson being held to be appendant to the two acres of land, therein they erred. They assigned as the third error that, whereas they showed the descent of the manor to which, &c., from Richard de Greneville to Bartholomew, who assigned a third part of the same manor, with the third turn to present, to Richard's wife, which Bartholomew afterwards divested himself of the manor, and took back an estate, by fine, to himself and Amy his wife for the term of their two lives, as above, and whereas they had shown that the woman tenant in dower was dead, and that this was the third turn to present, and therefore it belonged to them to present as to those who had the estate of the woman tenant in dower, after her death, inasmuch as the Justices awarded a writ to the Bishop for the plaintiff, contrary to this matter, they erred. They assigned as the

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une purprise faite sur Amye quant ele fuit coverte A.D. 1343. de Barthelmewe, et nentendoms pas qe sur tiel presentement poient ils Lassise meyntener, sur quei les Justices soy chargerent en lour jugement soulement le quel le presentement le pleintif deit estre une purprise sur Amye ou nemy; et pur ceo qe avise fuit par eux qe ceo ne fuit pas une purprise, ils agarderent bref al Evesqe pur Thebalde saunz prendre garde a le droit Johan de Raly et Amye sa femme, quel ils avoient moustre del presentement, &c., et en tant errerent. Un autre errour ils assignerent qe par la ou le pleintif cleyma le presentement come appendant a ij acres de terre par cause de ceo qe Barthelmewe, le baroun Amye, enfeffa le pere le pleintif de mesmes les ij acres de terre et de lavoweson, apres ceo qe Amye avoit joint estat en le maner a quei lavoweson, &c., en tant qe les Justices agarderent qe le baroun Amye puist severer lavoweson del maner par son feffement la ou Amye avoit joint estat ove luy, et par tant agarderent bref al Evesqe pur Thebalde come appendaunt a les ij acres de terre, et en tant ils errerent. Le tierce errour ils assignerent qe par la ou ils moustrent la descente del maner a quei, &c., de Richard¹ de G. tanqe a Barthelmewe, le quel assigna la tierce partie de mesme le maner, ove tierce tourne de presenter, a la femme Richard,¹ et le quel Barthelmewe apres soy demist del maner, et reprist estat, par fine, a luy et Amye sa femme a terme de lour ij vies, *ut supra*, et dit qe eux avoient moustre la femme tenante en dowere estre morte, et qe ceo fuit le tierce tourne del presenter, par quei a eux appent de presenter come a eux qavoient lestat la femme tenante en dowere, apres sa mort, en taunt qe les Justices agarderent bref al Evesqe pur le pleintif,² encontre ceste chose, ils errerent. Le

¹ Rastell, Harry; Tothill, Herry. | ² The old editions, la femme.

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A.D. 1343. fourth error that, whereas they showed in the Assise of Darrein Presentment that Theobald's ancestor had released to them all the right that he had in the manor to which, &c., reserving to himself a certain rent seck, inasmuch as the Justices adjudged that Theobald should recover the presentation, whereas his ancestor had extinguished his right, and the right of his blood, for ever, they erred. And they prayed that the judgment should be reversed.—*Pole*. You have not the record on which you assign error, for you will find that to the first writ which was sent to William de Herlaston he returned that there was an inquisition to be taken as to the value of the church, upon which inquisition, when it should be returned, judgment would be rendered in the Common Bench, and therefore this process is of record there, and consequently it cannot be of record here; wherefore it appears that what you have can only be called the tenour of the record, upon which you ought not to hear the errors, &c.—*W. Thorpe*. Since the judgment is rendered on the principal matter in the Common Bench, after which time it lies naturally to make this suit to reverse the judgment, if it be erroneous, and since the law does not put us to wait for our suit until this inquisition of which they have spoken be completed, but, in case the judgment be affirmed, the party will have a writ to the Sheriff out of this Court to have his damages, which they do not deny, and inasmuch as they do not answer as to the errors which we have assigned, we demand judgment, and pray that the errors be redressed.—*Pole*. As to that which you say that the judgment on the principal matter is rendered, and that after that time this suit is given to you, Sir,

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quart errorr ils assignerent qe par la ou ils A.D. 1343. moustrerent en Lassise de Darrein Presentement qe launcestre T. avoit relesse a eux tut le dreit qil avoit en le maner a quei, &c., reservaunt a luy certain rente sek, en taunt qe les Justices agarderent qe Thebaud recovereit presentement, la ou son auncestre avoit esteint son dreit, et le dreit de son sank a touz jours, en taunt errerent ils. Et prierent qe le jugement soit reverse.—*Pole.* Vous naves pas recorde sur quel vous le¹ errorr assignes, qar vous troverez qal primer bref qe fuit maunde a William de Herleston il retourna qil avoit une enqueste a prendre de la value de leglise, sur quel enqueste, quant il est retourne, jugement serroit rendu en le Comune Baunk, et par taunt cest proces² est de³ recorde la, et *per consequens* il ne poet estre de recorde cy; par quei il semble qe ceo qe vous aves ne poet estre dit forsqe le tenour de recorde, sur quei vous ne devez pas les errorrs oier, &c.—*W. Thorpe.* Del houre qe le jugement est rendu del principal en le Comune Baunk, apres quel temps il gist naturellement de faire ceste suyte de reverser le jugement, sil soit erroigne, et del houre qe la ley ne nous mette dattendre nostre suite tanqe cele enqueste de quei ils ont parle soit passe, mes, en cas qe le jugement soit afferme, la partie avera tiel bref al Vicounte hors de cienz pur ses damages aver, quele chose ils ne dedient pas, et de ceo qils ne respondent pas⁴ a les errorrs queux nous avoms assignes, nous demaundoms jugement, et prioms qe les errorrs soient redresses.—*Pole.* Quant a ceo qe vous parles qe le jugement del principal est rendu, apres quel temps ceste suite a vous est done, Sire,

¹ Tothill, la.² The old editions, proteccion.³ Edition of 1679, in le, instead of est de.⁴ pas is omitted from the edition of 1679.

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A.D. 1343. it may be that by the verdict of the jury, which is yet to be returned, this judgment rendered on the principal matter will be revoked, for in case the jury should say that the six months are passed, our recovery will fall wholly in damages, and we shall not have a writ to the Bishop. Then, since parcel of the judgment is still to be rendered on the damages when the verdict of the jury shall be returned, it seems that the record cannot be sent here, and consequently you cannot hear the errors.—BAUKWELL. At common law damages were not awarded on a writ of Aiel or of Cosinage, but now on such a judgment given on the principal matter such suit has been given to reverse the judgment in case there has been error; then, although the Statute¹ gives damages on such writs, the suit given at common law to reverse judgment shall not be delayed until the Sheriff has enquired as to damages, and therefore, it seems, no more in this case. And, therefore, answer, if you will, and this shall be saved to you, for in case the Court may see that it has not the record, it will not hold the plea.—Pole. We will not pass the plea without your judgment, for, in case you have not the record, the law does not put us to answer as to the errors.—BASSET. You shall never have judgment from us on such a point; but if you will abide judgment, abide it at your peril.—Pole. Then we pray that our exception be entered.—And this the Court granted to him.—Pole. Still we say that you cannot hear the errors, for this *Scire facias* by which we are warned bears date before the month after Easter, and the roll in which this record is entered before you, and by which the *Scire facias* should be warranted, is a roll of the present Term, which is of later date than the *Scire facias*, and therefore it follows that the *Scire facias* issued before you had

¹ 6 Edw. I. (Gloucester), c. 1.

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puit estre qe par le verdit de lenqueste, quel est uncore A.D. 1848.
a retourner, cel jugement rendu del principal serra
repelle, qar en cas qe lenqueste dit qe les vj mois
sont passes, nostre recoverir chira tout en damages,
et nous naveroms pas bref al Evesqe. Donques, quant
parcelle de jugement est uncore a rendre sur les
damages quant lenqueste serra retourne, il semble
qe le recorde ne poet pas estre maunde icy, et, *per
consequens* vous ne poiez les erreurs oyer.—BAUK.
A la comune ley damages ne fuerent pas agarde en
bref Daiel ou de Cosinage, mes meyntenant sur tiel
jugement done sur le principal tiele suite fuit done
a reverser le jugement en cas qil y¹ avoit errour;
donques coment qe lestatut doune damages en tiels
brefs, la suite done a comune ley de reverser ne
serra pas delaye tanqe le Vicounte ad enquis des
damages, par quei nient plus semble icy. Et pur
ceo responez, si vous voiles, et ceo a vous serra
salve, qar, en cas qe la Court veie qele nad pas
le recorde, ele ne voet pas tener le plee.—POLE.
Nous ne passeroms pas le plee saunz vostre agarde,
qar, en cas qe vous navez le recorde, la ley ne nous
met pas de respoundre a les erreurs.—BASSET. Vous
naveres jammes agarde de nous sur tiel point; mes
si voilles demurer, demures la a vostre peril.—POLE.
Donques nous prioms qe nostre excepcion soit entre.
—Et ceo la Court a luy grante.—POLE. Uncore
nous dioms qe vous ne poies les erreurs oyer, qar
cest *Scire facias* par quel nous sumes garni porte
date devant le mois de Pasche, et le rulle en quel
cest recorde est entre devant vous, et de quei le
Scire facias serreit garraunti, est rulle de cest terme,
qest de puisne date qe nest le *Scire facias*, et par
taunt ensuit qe le *Scire facias* issit avant ceo qe vous

¹ y is omitted from Rastell and Tothill.

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A.D. 1343. the record, and therefore it seems that it was without warrant, and upon such warning we shall not be put to answer as to the errors; wherefore, &c.—
BAUKWELL. Suppose the record came to us at the end of last Term, we ought now to grant a *Scire facias* against the tenant, for we are informed of record though it be not entered on the roll. And, therefore, see whether you will abide judgment thereon.—*Seton*. As to the first error that they have alleged, in that the Justices in the Assise of Darrein Presentment gave judgment on the point whether the presentation from which the plaintiff took his title was an usurpation upon Amy, or not, without having regard to the other titles by which Amy had shown her right to present, Sir, you will find in the record that all those titles of which he speaks we were ready to deny, in case he should have abode judgment on them; but because he made his conclusion solely on the point that the presentation made by our ancestor was an usurpation upon Amy, and abode judgment on that alone, he charged us with that alone, and discharged us from the rest, and, in that the Justices rendered judgment upon that, they did well.—*W. Thorpe*. Sir, they erred, and see how—for although we say that the presentation which the plaintiff had made was an usurpation upon Amy, while she was covert, and although it was adjudged to be no usurpation inasmuch as the plaintiff had an estate in the advowson, at the time of the presentation, through the feoffment of Amy's husband, nevertheless, when Amy's husband was dead, the estate which he had made against the wife had ceased in law; then, since the Court, after the death of Amy's husband, granted a writ to the Bishop, against the woman, by reason of her husband's feoffment, which had ceased to be operative against her in law (and he said that she could not have any other recovery than by possession, because she

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avez le recorde, et par taunt il semble qe ceo fuit A.D. 1343. saunz garraunt, sur quel garnissement nous ne serroms mis a respoudre a les erreurs; par quei, &c.—
 BAUX. Jeo pose qe le recorde a nous vient en le fine del darrein terme, nous devoms granter meyn-tenant¹ un *Scire facias* devers le tenant, qar nous sumes de recorde mesqil ne soit mye entre en le roulle. Et, pur ceo, veies si vous voilles la demurer.—
 —*Setone*. Quant al primer errour qils ount allegge, de ceo qe les Justices en Lassise de Darrein Presentement ajugerent sur ceo le quel le presentement de quei le pleintif prist son tite fuit une purprise a Amye, ou nemy, sans prendre regarde a les autres titles par queux Amye avoit moustre son dreit de presenter, Sire, vous troveres en le recorde qe tous ceux titles des queux il parle nous sumes prest a dedire, en cas qil ust demure sur eux; mes pur ceo qil fist sa conclusion seulement sur ceo qe le presentement nostre auncestre fuit une purprise sur Amye, et sur ceo seulement demura, il nous chargea seulement de ceo, et nous deschargea del remenant, et en tant qe les Justices rendirent jugement sur ceo ils firent bien.—*W. Thorpe*. Sire, ils errerent, et veiez coment, qar coment qe nous parloms qe le presentement qe le pleintif avoit fait fuit une purprise sur Amye, taunt come ele fuit coverte, et coment qe ceo fuit ajuge nule purprise par taunt qe le pleintif avoit estat en lavoweson, al temps de presentement, par feffement le baroun Amye, nepurquant, quant² le baroun Amye fuit mort, lestat quel il avoit fait devers la femme fuit cesse en ley; donques, quant la Court, apres la mort le baroun Amye, graunta bref al Evesqe, encontre la femme, par cause de feffement son baroun, quel fuit cesse devers luy en ley, et dit qele ne put autre recoverir aver forsqe par posses-

¹ Rastell, mainnante.

² quant is omitted from the edition of 1679.

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A.D. 1348. could not have the *Cui in vita* in respect of the advowson, nor a writ of Right any more, because she had an estate only for term of life), and inasmuch as they awarded a writ to the Bishop for the plaintiff they erred.—*Pole*. Sir, you ought not to have any regard to all this, in this case, for all this would not, in this case, have been a title against us in Assise of Darrein Presentment, without having answered as to the presentation from which we make our title, because when we had a presentation, whether rightfully or wrongfully, the law gives us the Assise on that presentation. Then, when, &c.

Note.

§ Note that *Pole* came to the bar [of the Common Bench] and recited how one Theobald de Greneville had a writ to the Bishop, and also a writ to the Sheriff to enquire as to damages in an Assise of Darrein Presentment brought against John de Ralegh and Amy his wife, and he said that this inquest on the damages was returned, and therefore he prayed the damages assessed by the jury.—HILLARY. The record of this Assise is sent into the King's Bench to be reversed, and so our power is extinguished; and therefore we cannot award execution of damages, but you must wait until the proceedings in Error are finished there, because in case our judgment be reversed it is not reasonable that you have execution of damages.—But afterwards he sued a writ to cause this parcel of the record to come into the King's Bench, as appears.

Dower
where the
demand-
ant had

(5.) § Dower heretofore was brought against Edward Cretynge, who vouched. The vouchee came, and

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sion, qar le *Cui in vita* ne puit ele pas aver del A.D. 1343.
 avoweson, ne bref de Droit nient le plus, pur ceo
 quele navoit qa terme de vie, et en taunt qils agarde-
 rent bref al Evesqe pur le pleintif ils errerent, &c.
 —*Pole*. Sire, a tout ceo icy vous [ne] devez prendre
 regarde, qar tut ceo icy nust este tittle devers nous
 en Assise de Darrein Presentement, sans aver re-
 spondu al presentement de quel nous fesoms tittle,
 qar quant nous avoms un presentement, ou fuit ceo
 a dreit, ou fuit ceo a tort, la ley de cel presente-
 ment nous doune Lassise. Donqe, quant, &c.

§ *Nota*¹ qe *Pole* vint al barre, et rehercea coment *Nota*.
 un Thebaud de G. avoit bref al Evesqe, et auxi
 bref al Vicounte denquere des damages en Assise
 de Darrein Presentement porte vers Johan Raly et
 Amy sa femme, quele enqueste il dit qe fuit re-
 tourne sur les damages, par quei il pria les damages
 taxes par lenqueste.—*HILL*. Le recorde de ceste
 Assise est maunde en Baunk le Roi pur estre re-
 verse, issint nostre poir² esteint; par quei nous
 ne pooms agarder execucion des damages, einz vous
 covient dattendre tanqe lerrour³ fuit fini la, qar, en
 cas qe nostre jugement soit reverse, il nest pas
 resoun qe vous eiez execucion de damages.—Mes
 apres il suist bref de faire vener cele parcele del
 recorde en Baunk le Roi, *ut patet*.

(5.)⁴ § Dowere autrefoith fut porte vers Edward *Dowere*
 Cretynge, qe voucha. Le voucha vint, et fait par *ou la*
 demand-
 ante avoit

¹ This report appears by itself as No. 45 in the old editions. As, however, it relates to the proceedings in Error reported immediately above, it has been transferred to this place.

² Rastell, powere.

³ Rastell, lenqueste.

⁴ From L., Harl., 22,552, and

25,184. There is in the *Placita de Banco* of Easter Term 17 Edw. III. (R^o 297) an enrolment of a writ of seisin directed to the Coroners of Suffolk because Edward de Cretynge was Sheriff of that County. It is therein recited that the action had been brought by Hawise late

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A.D. 1843. *profert* was made of the deed by which he was supposed to be bound to warrant, which deed was denied; and therefore it was then adjudged that the demandant should recover. And afterwards, when the inquest remained to be taken between the tenant and the vouchee, before SHARDELOWE, a Protection was produced in the country for the vouchee, and the same person produced it that had previously answered as the vouchee's attorney.—SHARDELOWE then said that he did not understand that the Protection would lie, because the original plea is a plea of Dower, and whether it be allowable or not, he could not allow it because he had no warrant to do anything except that which is limited by Statute.¹ And therefore he then recorded the vouchee's default. And upon this *profert* was made of the Protection in the Bench, and the *Cape* issued, notwithstanding, returnable now. The same attorney that previously produced the Protection came and alleged imprisonment, on behalf of himself and his principal, in order to save the default.—SHARDELOWE. Are you the person who previously made answer in the plea as attorney?—And he said Yes.—SHARDELOWE. How then can you mean to allege imprisonment of yourself on that day, when

recovered
seisin, but
the in-
quest
remained
to be
taken be-
tween the
tenant and
the
vouchee.
And
observe
that the
Cape
issued
through
the de-
fault of
the
vouchee.
And note
that a
Protection
does not
lie, be-
cause it
does not
lie in the
principal
plea.
It would
lie never-
theless in
Scire
facias,
witness
the case of
J. Cobham
in the
King's
Bench in
respect of
damages
recovered
in Assise
of Novel
Disseisin.

¹ 52 Hen. III. (Marlb.) c. 12.

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quel il serreit lie de garrantir fut mys avant, quel A.D. 1343.
 fait fut dedit; par quei adonques fut agarde qe la ^{recoveri}
 demandante recoverast. Et puis, quant lenqueste fut ^{seisine,}
 a prendre par *Nisi prius* entre le tenant et le ^{mes len-}
 vouche, devant SCHARD., Proteccion fut mys avant ^{queste fut}
 en pays pur le vouche, et mesme celuy le mist ^{a prendre}
 avant gautrefoith respondit come soun attourne.— ^{entre le}
 SCHARD. dit adonques qil nentendist pas qe la Pro- ^{tenant et}
 teccion girreit,² pur ceo qe loriginal pleee est pleee ^{le vouche.}
 de Dowere, et, le quel ele soit allowable ou noun,³ ^{Et vide}
 il ne la put allower, qar il nad pas garraunt⁴ mes ^{par la}
 de faire ceo qe par estatut est limite. Par quei il ^{default le}
 adonques recorda le⁵ default. Et sur ceo en Baunk ^{vouche}
 la Proteccion fut apres mys avant, et, *non obstante*, ^{Cape issit,}
Cape issit retournable a ore. Lattourne mesme, ^{&c.}
 gautrefoith mist avaunt la Proteccion vint, et alleggea ^{Et nota qe}
 enprisonement,⁶ pur luy et son mestre, a salver la ^{Proteccion}
 default.—SCHARD. Estes vous celuy qe, avant⁷ ces ^{ne gist}
 heures, el pleee⁸ avez respondu⁹ pur attourne?—Et ^{mye quia}
 il dit quil.—SCHARD. Coment voillez vous donques ^{non in}
 allegger enprisonement de vous mesmes a la journe, ^{placito}
^{Scire}
^{facias,}
^{teste J.}
^{Cobham}
^{in Banco}
^{Regis in}
^{Scire}
^{facias de}
^{damnis}
^{recoveris}
^{en Assise}
^{de Novele}
^{Disseisine.¹}
^{[Fitz.,}
^{Jugement,}
^{112;}
^{Protec-}
^{cion, 49.]}

wife of John de Cretyngge against Roger Deneys and others, who vouched Edward son of Adam de Cretyngge. He vouched over Edmund de Cretyngge, knight, son and heir of John de Cretyngge, who appeared, "et petit sibi ostendi per quod eidem Edwardo warrantizare deberet. Et idem Edwardus protulit quandam chartam sub nomine predicti Edmundi, cujus heres ipse est, et testificantem warrantiam, quam quidem chartam idem Edmundus contra dixit. Per quod consideratum fuit quod predicta Hawisia recuperaret inde seisinam suam versus predictum Rogerum

" [and the other tenants] et idem " Rogerus [and the others] habent de terra predicti Edwardi ad " valentiam &c." Nothing appears as to the Protection.

¹ The whole of the marginal note, except the word Dowere, is from 25,184 alone.

² Harl., gist; 22,552, and 25,184, geust.

³ The words ou noun are omitted from L.

⁴ L., pouer.

⁵ Harl., sa.

⁶ L., prisonement.

⁷ L., altrefoith avant.

⁸ The words el pleee are omitted from L., and 22,552.

⁹ L., este resceue.

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A.D. 1343. the Court is apprised that you were at large at the same time, and produced a Protection?—*Gaynesford*. A Justice of *Nisi prius* has no other warrant to do anything else but to take inquests, and record defaults, and nonsuits; and when anyone is called, and no one answers for him, the Justice can never record that he then has an attorney in Court, but shall only record a default. Besides, you do not find it recorded in the roll that the attorney produced the Protection, and it is now another Term; wherefore they cannot now record it, nor receive anything else from the Justice as matter of record except that which you find in his record.—*SHARSHULLE*. The power of a Justice of *Nisi prius* is larger than you say, for he can amerce jurors, and call them under penalty, and also punish a trespass committed in his presence which sounds in contempt of the King, and make process thereupon, so that he can record anything whatsoever which may incidentally aid the matter or the reverse.—*Thorpe, ad idem*. They are in a case in which a *feme covert*, and also a person to whom the reversion belongs would be admitted, by reason of the default of their husbands or tenants, if they were to appear at *Nisi prius*, and yet the Justices cannot there admit them, but have to record their appearance, and if they did not appear there, ready, they would never be admitted. And the Justice must record all that; and, if he will not do so, one shall have a

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quant¹ Court est² aprise qe vous fuistes a large a^{A.D. 1343.} mesme le temps, et meistes³ avant Proteccion?—

Gayn. Justice de *Nisi prius* nad autre⁴ garrant dautre chose faire forsqe de prendre⁵ enquestes, recorder defautes, et nounsuytes; et quant homme est demande, et nul homme respont pur luy, Justice ne poet jammes recorder qil ad attourne⁶ en la Court adonques, mes soulement recordera un default. Ovesqe ceo, vous ne trovez pas en roulle recorde qe lattourne mist avant la Proteccion, et ore est ceo⁷ autre Terme; par quei a ore nel pount ils⁸ recorder, ne autre chose de luy resceivere⁹ come chose de recorde forsqe ceo qe vous trovez en soun¹⁰ recorde.

—*SCHAR.* Pouere¹¹ de Justice de *Nisi prius* est plus large qe vous ne dites, qar il poet¹² amercier les jurours, et les demander sour peyn, et auxi punir trespas fait en sa presence qe soune en despit du Roy, et sur ceo faire proces, issint qe quant qe poet cheire¹³ en eide ou deseide de la bosoigne il¹⁴ poet recorder.¹⁵—*Thorpe, ad idem.* Ils sont en cas ou femme covert, et auxi celuy a qi la reversion appent serrount resceuz, par default lour barouns ou tenauntz, sils veignent al *Nisi prius*, et¹⁶ unqore ne pount les Justices illoeqes les resceiver, mes recorder lour venue, et, sils ne venissent pas prest illoeqes, jammes ne serrount resceuz. Et tout cella¹⁷ covient qe Justice recorde¹⁸; et, sil ne voet nient, homme avera

¹ 22,552, qar.

² est is from L. alone.

³ L., mist.

⁴ autre is omitted from L.

⁵ 25,184, enprendre.

⁶ 25,184, tourne.

⁷ ceo is omitted from L.

⁸ L., pount ils rien, instead of nel pount ils.

⁹ Harl., resceiveretz.

¹⁰ 25,184, la.

¹¹ Harl., Poer; 22,552, Power; 25,184, Poair,

¹² L., and Harl., ils pount.

¹³ L., chiere.

¹⁴ L., il la.

¹⁵ L., faire.

¹⁶ et is omitted from L.

¹⁷ L., celuy.

¹⁸ L., Justices acordent, instead of Justice recorde.

No. 6.

A.D. 1343. writ to him to cause him to make a Bill thereon, and that shall be parcel of his record, and shall give advantage to the party; so also in this behalf.—And afterwards a writ came to SHARDELOWE to record the whole case to his fellows, and another writ to his fellows to receive his record, and he recorded the whole as above.—STONORE. Inasmuch as you, Attorney, have admitted that you were attorney in the same plea, and we have it of record that you produced the Protection for your principal, on the ground that he was in parts beyond the sea, in which case an averment to have enquiry as to your imprisonment is of no avail, since we are apprised of the reverse by record, the Court therefore adjudges that the tenant do recover to the value in proportion, &c.—And so note that a Protection does not lie, and also that the woman recovered her dower immediately, and that a Justice at *Nisi prius* has not warrant to allow a Protection, &c.

Secta (6.) § Suit to a Mill in the *Debet et solet*.—

No. 6.

bref a luy¹ qil face bille² sur ceo, et cella serra A.D. 1343. parcelle de soun³ recorde, et durra⁴ avantage a la partie; auxi de ceste part.⁵—Et puis vint bref a SCHARD. de recorder tout le cas a ses compaignons, [et altre bref a ses compaignons]⁶ de resceiver son recorde, et il recorda tout *ut supra*.—STON. Pur ceo qe vous, Attourne, avez conu qe vous fuistes⁷ attourne en mesme le plee, et nous avoms de recorde qe vous meistes⁸ avant la Proteccion pur vostre mestre, pur ceo qe il fut es⁹ parties dela, &c., en quel cas averement denquerrer de vostre enprisonement ne bosoigne pas, desicome par recorde nous sumes apries del revers par quei agarde la Courr qe le tenant¹⁰ recovere a la value come affiert, &c.—*Et sic nota* qe la Proteccion ne gist¹¹ pas, et auxi qe la femme recovery maintenant son dowere, et qe Justice a *Nisi prius* nad pas garrant dallower Proteccion, &c.

(6.)¹² § Suyte¹³ de Molyn en *Debet et solet*.—Suyte

¹ The words a luy are omitted from L.

² L., bulle.

³ 25,184, celle.

⁴ L., dirra.

⁵ L., par decea, instead of de ceste part.

⁶ The words between brackets are omitted from L.

⁷ 25,184, feistes.

⁸ L., mistes.

⁹ L., as.

¹⁰ All the MSS. except L., qil, instead of qe le tenant.

¹¹ 22,552, geust.

¹² From L., Harl., 22,552, and 25,184. This appears to be the *Secta ad molendinum* brought by the Prior of Watton against the Abbot of Meaux and others, in respect of the Prior's mill in Skerne

(*Placita de Banco*, Easter 17 Edw. III. R^o 113). The declaration was "quod, cum prædictus Abbas "molere *debet et solet* ad molendum ipsius Prioris in Skyren "omnia blada crescentia in sexaginta et septem bovatis terræ ejusdem Abbatis in Skyren, "videlicet frumentum, hordeum, "siliginem, avenas fabas, et pisas, "ad vicesimum vas," [and in like manner the other defendants their corn growing on certain of their lands] "de quibus sectis ipse Prior "seisitus fuit per manus prædictorum Abbatis" [and the other defendants] "ut de feodo et jure "ipsius Prioris . . . , prædicti "Abbas et alii sectas illas ei subtraxerunt."

¹³ L., seute.

Nos. 7, 8.

A.D. 1848. *Notton* denied the right and damages, and demanded *ad Molendinum*. view.—*Blaykeston*. It is of his own wrong and without drawal; judgment, &c.—*SHARDELOWE* by judgment granted him the view.
Note as to View.

A Proclamation lost its force by reason of a *Prece Partium*. (7.) § After the Proclamation had been testified on a writ of Wardship, the defendant was called, and appeared, and took a day by *Prece Partium*.—On that day *Pulteney*, because the defendant made default, prayed judgment on the Proclamation.—*SHARSHULLE*. By the appearance after the Proclamation the previous process lost its force as to rendering judgment on default.—*Pulteney*. Since he now makes default, there is nothing to be done but to go back, and render the same judgment that you would have rendered before, in case he had not appeared.—*SHARDELOWE*. Certainly you shall not have it.

Note as to challenges of juries in Crown cases, and note the diversity. (8.) § Note that, in a Crown case, if the defendant challenge three juries, in general terms, without cause, he is then refusing lawful trial, because he does not assign any reason for his challenge; but if he have a sufficient reason for his challenge, that shall be tried on his prayer as in any other common case; and on his challenge being found good, that jury shall be withdrawn, and shall not be counted, &c.

Nos. 7, 8.

Nottone defendi le dreit et damages, et demanda la A.D. 1343.
viewe.—*Blayk*. Cest de son tort demene⁸ et sustrere; de Molyn.¹
jugement, &c.—*SCHARD*. par agarde luy graunta la Viewe.²
viewe.⁴ [Fitz.,
View, 68.]

(7.)⁵ § Apres la Proclamacion tesmoigne en bref Proclama-
de Garde, le defendant fut⁷ demande,⁸ et⁹ apparust, cion perdi
et prist jour par *Prece Partium*.—A¹⁰ quel jour par *Prece*
Pult., pur ceo qe le defendant fist default, pria juge- *Partium*.⁶
ment sur la Proclamacion.—*SCHAR*. Par lapparaunce [Fitz.,
Judgment,
113.]
apres la Proclamacion le proces adevant perdist sa
force quant a jugement rendre sur default.—*Pult*.
Del houre qil ore fait default, il ny ad¹¹ forsqe re-
tourner,¹² et rendre mesme le jugement qe vous ussez
autrefoitz rendu, en cas qil nust pas venu.¹³—*SCHARD*.
Certes vous laverez pas.

(8.)¹⁴ § *Nota* qen cas de Corone, si le defendant *Nota den-*
chalange generalment¹⁶ iij enquestes sanz cause, questes
donques refuse¹⁷ il la ley, pur ceo qil ne mette pas, chalanges
cause de son chalange; mes, sil eit¹⁸ suffisaunte¹⁹ en cas de
Corone,
cause de son chalange, a sa prier²⁰ ceo serra trie, et *nota*
come en autre comune cas; et, sur son chalange diversite.¹⁵
[17 Li:
Ass: 6.]
trove, celuy serra tret, et ne serra pas nombre, &c.

¹ The words de Molyn are from Harl. alone.

² The words *Nota de Viewe* are from 25,184 alone.

³ The word *demene* is placed after *sustrere* in 22,552 and 25,184.

⁴ The record, "Et Abbas et alii, per attornatum suum veniunt et petunt inde visum. Habeant. Dies datus est eis hic a die Sancti Michaelis in xv dies."

⁵ From L., Harl., 22,552, and 25,184.

⁶ The words *perdi sa force par Prece Partium* are from 25,184 alone. In Harl. the marginal note is *Proces en Garde*.

⁷ *fut* is from L. alone.

⁸ *demande* is omitted from 25,184.

⁹ *et* is from L. alone.

¹⁰ L., A autre jour il fist default, a.

¹¹ L., and 25,184, *nad*, instead of *ny ad*.

¹² 22,552, *recoverer*.

¹³ *venu* is omitted from L.

¹⁴ From L., Harl., 22,552, and 25,184.

¹⁵ The marginal note is from 25,184 alone. In Harl., it is *Chalange*, and in 22,552, *Corona*.

¹⁶ 22,552, generalment refuse, instead of *chalange generalment*.

¹⁷ L., *refusa*.

¹⁸ L., *mette*.

¹⁹ *suffisaunte* is omitted from L.

²⁰ 25,184, *peril*.

No. 9.

A.D. 1343. (9.) § The King brought a *Quare non admisit* against the Archbishop of Canterbury, Guardian of the Spiritualities of the Bishopric of Lincoln, during the vacancy of the See, because he did not admit the King's presentee, &c.—*Pulteney*. We tell you that by a composition between the Dean and Chapter and the Archbishop's predecessors it is ordained that in time of vacancy, &c., the Dean and Chapter shall elect three of the Chapter, and shall present them to the Archbishop as Metropolitan and Sovereign Head, and the Archbishop shall elect one of the three, who, during the vacancy of the See, shall do everything that it belongs to the Ordinary to do, and shall have institution and deprival; and we tell you that the Dean and Chapter elected A., B., and C., and presented them, &c., to the Archbishop, and he elected B., who exercised that office, and so we have only a sovereignty as Metropolitan, and are not Guardian, &c. And we do not understand that such a writ lies against us.—*Thorpe*. Of common right, in time of the vacancy of Bishoprics, the Archbishop is Guardian, and Minister of the King, on the King's behalf; and, as to that which he says respecting a composition between the Chapter and the Archbishop, the King ought not to recognise it, but to send to the person who, of common right, ought to act; and even though there were such a composition made on their own authority, that cannot discharge the Archbishop as against the King, contrary to common right. And we tell you further that the person who shall be elected in the alleged manner, and presented, exercises the office

. No. 9.

(9.)¹ § Le Roy porta *Quare non admisit* vers A.D. 1343.
 Lercevesqe de Caunterbirs; Gardein del Espirualte² *Quare non admisit.*³
 del Evesche⁴ de Nichole, vacaunt le See,⁵ de ceo
 qil ne resceut pas le presente le Roy, &c.—*Pult.*
 Nous vous dioms qe par composicion entre le Dean
 et Chapitre⁶ et les predecessours Lercevesqe est
 ordeigne qen temps de voidaunce,⁷ &c., Dean⁸ et
 Chapitre⁶ eslirront iij de Chapitre,⁶ et les pre-
 senteront al Ercevesqe come Metropolitan et Sovereyn,
 et Lercevesqe eslirra un des iij, le quel, vacaunt le
 See, ferra quant qe appent al Ordiner, et avera
 institucion et destitucion; et vous dioms qe le Dean
 et le Chapitre⁶ eslurent A., B., et C., et les pre-
 senterent, &c., al Ercevesqe, et il eslust B., le quel
 usa cel office, et issint navoms forse un sovereinte⁹
 come Metropolitan,¹⁰ et ne sumes pas Gardeyn, &c.
 Et nentendoms pas qe tiel bref vers nous igise.¹¹—
Thorpe. De comune dreit, en temps de vacacion
 des Eveschies,¹² Ercevesqe¹³ est Gardein, et Ministre
 le¹⁴ Roy, pur le Roy¹⁵; et, ceo qil parle de com-
 posicion entre le Chapitre et Lercevesqe le Roy ne
 deit conustre, mes maunder a celui qe de comune
 dreit [le deit faire; et tout y avoit tiele composicion
 de leur autorite demene, ceo ne put descharger
 Lercevesqe vers le Roy, countre comune dreit].¹⁶ Et
 vous dioms outre qe celui qe serra eslieu par la
 manere, et presente, il use loffice come Official

¹ From L., Harl., 22,552, and 25,184.

² The marginal note in 22,552, is Contempte.

³ L., and 25,184, Hospital.

⁴ 22,552, Eveschie.

⁵ The words le See are omitted from L.

⁶ L., Chapistre.

⁷ L., vacacion.

⁸ L., le Dean.

⁹ L., sovereigte; Harl., soileingte.

¹⁰ 25,184, Metropolouytayne.

¹¹ L., and 22,552, gise; 25,184, ygise.

¹² All the MSS. except 22,552, Evesqes.

¹³ L., Archevesqe.

¹⁴ L., pur le.

¹⁵ The words pur le Roy are omitted from L. and Harl.

¹⁶ The words between brackets are omitted from 22,552.

No. 9.

A.D. 1343. as the Archbishop's Official, and by his commission is attendant and answerable for the issues and profits accruing to the Bishopric by way of account; thus the Archbishop is Chief Guardian; and he has not denied the contempt; judgment.—*Pole*. Whereas you say that the Archbishop is Guardian of right it is not so: for by common right, and law, the Dean and Chapter are Guardians, unless there be some restriction by prescription or composition; besides, the question who is Guardian of right does not fall within the cognisance of the King's Court, but the King ought not to do anything else but send a writ in general terms to the Guardian of the Spiritualities, without determining who it is by any certain name, so that the person who exercises the office (himself and no other) has to answer to the King's command.—*Thorpe*. We understand common right to be in accordance with that which is most commonly practised; now it is the fact that the Archbishops are everywhere Guardians, &c., in this realm; and as to what you say that the King ought not to know who may be Guardian of right, but to send a writ in general terms to the Guardian, it is so; he shall send his first command in general terms, but, when his command is not executed, by reason whereof it is necessary to commence suit for contempt, in that suit he shall make process against the Guardian by a certain name, so that the King ought necessarily to know to whom to send, for otherwise he would not know against whom to sue in respect of the contempt; and since of common right, and also by force of the composition which he alleges, the Archbishop is the King's officer, and the Guardian, judgment.—*Scor*. You say two things on behalf of the

No. 9.

Lercevesqe, et par sa commissioun est entendaunt A.D. 1343. et resonaunt des issues et profits avenants al Ercevesche¹ par voie dacompte; issint est Lercevesqe Chief Gardein; et il nad pas dedit le contempt; jugement.—*Pole*. La ou vous dites qe Lercevesqe est Gardein de dreit, il nest pas issi: qar de comune dreit, et² ley, Dean et Chapitre sount Gardeins, si ceo ne soit restreint par prescripcion ou composicion; ovesqe ceo, qi³ soit Gardein de dreit ne chiet pas en conissaunce de la Court le Roy, mes le Roy ne deit autre chose faire mes escriver generalment al Gardein del Espiritualte,⁴ sanz lui determiner par certain noun, issi qe celui qe use loffice, il ne nul autre, est resonaunt⁵ al maundement le Roy.—*Thorpe*. Comune dreit entendoms solonc ceo qe plus comunement est use; ore est il issint qe les Ercevesques⁶ par tout sont Gardeins, &c., en ceste terre; et a ceo qe vous parlez qe le Roy ne deit pas saver qi soit Gardein de dreit, mes escrivers⁷ generalment al Gardein, il est issint; il maundera son primer comaundement⁸ generalment, mes quant⁹ son maundement¹⁰ nest pas fait, par quei il covient prendre suite¹¹ par contempte, en¹² cele suite fra il proces vers Gardein par certain noun, issint qe le Roy deit saver *necessario* a qi maunder, qar autrement ne savorait il vers qi suyre del contempte; et del houre qe de comune dreit, et auxi par force de la composicion quel il allegge, il est officer le Roy et Gardein, jugement.—*Scor*. Vous parlez pur le Roy deux choses, saver, qe de

¹ All the MSS. except Harl., Ercevesqe.

² The words dreit, et are omitted from 22,552.

³ Harl., and 25,184. qil.

⁴ L., Spirituelle; 25,184, Hospital.

⁵ 25,184, responsable.

⁶ L., Lercevesqe, instead of les Ercevesques.

⁷ L., escripvera.

⁸ 22,552, maundement.

⁹ quant is omitted from L.

¹⁰ L., commaundement.

¹¹ L., ceo.

¹² L., et en

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A.D. 1348. King, to wit, that of common right the Archbishop is Guardian, and also that by force of the composition he is Guardian, and that is another way; and, on the other hand, the Archbishop says that, of common right, the Dean and Chapter are Guardians, and also that by force of the composition a person other than he is Guardian, which is a different plea; wherefore consider to which you will hold.—*Pole*. How can you try the question who is Guardian of common right, since that does not fall within your cognisance?—*Scot*. Let us agree upon that, for we shall not send to the Ordinary who is himself a party.—*PARNING*. The King ought to betake himself to the person who intermeddles with the office, without having regard to the question who, of right, ought to execute it; and you see that others besides Bishops exercise the office of Ordinary, and to them the King shall send his writ, as is the case with respect to the Archdeacon of Richmond.—*Stouford*. He has always had such jurisdiction, and I believe that it commenced by license from the King. And further we tell you that Archbishops in the time of King Richard, and for all time before, were Guardians until the time of King Henry [III.], when by reason of failure of good guardianship, &c., the composition was taken as above; and we do not understand that by force of a composition made between them since time of memory the Archbishop can discharge himself as against the King.—And afterwards there came a writ to stay proceedings, because the King had taken the same suit against the Bishop of Lincoln, &c.

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comune dreit il est Gardein, et auxi par force de A.D. 1343. la composicion [qil est Gardein, qest autre voie; et areremayn Lercevesqe dit qe, de comune dreit, Dean et Chapitre sont Gardeins, et auxi par force de la composicion]¹ qautre qe luy est Gardein, qest autre plee; par quei veiez ou vous voillez tener.—*Pole*. Coment poiez vous trier² qi est Gardein de comune dreit, desicome ceo ne chiet pas en vostre conissance?—*Scor*. Lessez nous a³ covenir, qar nous maundroms pas al Ordiner qest mesme partie.—*PARN*.⁴ A⁵ celui qe se medle [doffice a luy se⁶ deit le Roy prendre, sanz aver regarde qi de dreit le deit faire; et vous veiez]⁷ qautres qe Evesques usent office Dordiner, et a eux le Roy maundra son⁸ escript, come est del⁹ Erceceken¹⁰ de Richemounde.—*Stouf*. Il ad eu de tout temps tiel jurisdiction, et jeo quide par conge du Roy qe ceo comencea.¹¹ Et outre vous dioms qe Lercevesques en temps le Roy Richard, et de tout temps devant, furent Gardeins taunt qe al temps¹² le Roy Henre qe par default de bone garde, &c., la composicion se prist, *ut supra*; et nentendoms pas qe par composicion fait entre eux puis temps de memorie se puisse vers le Roy descharger.—Et puis vint bref de surseer, pur ceo qe le Roy avoit pris¹³ mesme la suyte vers Levesqe de Nichole, &c.¹⁴

¹ The words between brackets are omitted from 22,552.

² L., *poet estre trie*, instead of *poiez vous trier*.

³ a is omitted from L.

⁴ L., *PARUENE*.

⁵ A is omitted from 22,552, and 25,184.

⁶ Harl., *si*; the word is omitted from L.

⁷ The words between brackets are omitted from 25,184.

⁸ The words *maundra son* are from L. alone.

⁹ The words *est del* are omitted from 22,552.

¹⁰ L., *Archediacoun*; 22,552, *Lercedeken*.

¹¹ L., *commence*.

¹² The words *al temps* are omitted from Harl. and 25,184.

¹³ *pris* is omitted from L.

¹⁴ The action against the Bishop of Lincoln, which is all that one could expect to find on the roll, is probably that which appears among the *Placita coram Rege*, Easter 17 Edw. III. (*Rex*) R^o 41. It was

No. 10.

A.D. 1848.

Audita Querela on a statute merchant sued by the person who executed the statute; and now *profert* is made of a Protection for him. See above Trinity Term in the 13th year.¹

(10.) § The Abbot of St. James of Northampton sued execution on a statute merchant against John Hardeshulle,¹ &c., and John sued an *Audita Querela*, and a *Venire facias*, returnable on the same day as that on which the *Capias* on the Certificate was returnable.—*Thorpe* prayed that John might be called on the *Audita Querela*.—*Pole*. He has a Protection.—*Thorpe*. He is plaintiff, and therefore a Protection does not lie; therefore we pray execution.—*Pulteney*. Even though he be plaintiff, he is so only in order that he may have an answer to prevent execution; so he is in a manner defendant; and every one who produces an acquittance is plaintiff in a manner for the purpose of proving the acquittance to be good, and nevertheless a Protection lies after an acquittance has been pleaded; and if you disallow the Protection you will then award execution contrary to the King's prohibition.—*Thorpe*. If he uses the Protection on our suit on the statute merchant, then he has not a day, and if on the *Audita Querela* then he is plaintiff, and therefore it is not allowable.—*Pole*. You shall not have execution on the statute contrary to the Protection, and if that be without day the Court has no warrant to hold plea on the

¹ See above, Hilary Term, No. 11. | ² Y.B., Trin. 13 Edw. III., No. 48.

No. 10.

(10.)¹ § Labbe de Seint Jakes de Northampton² A.D. 1343. suyst execucion sur statut marchaunt vers Johan Hardeshulle, &c., et Johan suyst *Audita Querela*, et *Venire facias*, retournable⁴ a mesme le jour que le *Capias*⁵ sur la certificacion fut retournable.⁶—*Thorpe* pria qe Johan fuist demande en le *Audita Querela*.—*Pole*. Il est par Proteccion.—*Thorpe*. Il est pleintif, pur quei Proteccion ne gist pas; par quei nous prioms execucion.—*Pult*. Tout soit il pleintif, il nest forsque daver respons en⁷ destourbanche de lexecucion⁸; issint est il defendant en manere; et chescun homme qe mette avaunt acquitaunce est actour en manere a prover lacquitaunce bone, nepurquant⁹ apres acquitaunce plede Proteccion gist; et si vous desalowes la Proteccion donques agarderes execucion countre la defens le Roy.—*Thorpe*. Sil use la Proteccion a nostre suyte sur lestatut, la nad il pas jour, et si al *Audita Querela* la est il pleintif, par quei ele nest pas allowable.—*Pole*. Countre la Proteccion vous naverez pas execucion sur lestatut, et si cel soit sanz jour Court nad pas garraunt de tener plee sur¹⁰

Audita Querela
sur un
estatut
marchant
suy par
cely qe fist
estatut; et
oreest Proteccion
mys pur
luy.
Vide supra
Trinitatis
xiiij.²

brought by the King because the Bishop had not admitted his presentee to the church of Grafton (Oxfordshire), the presentation to which he had recovered in the King's Bench against the Prior of Wilmington, the temporalities of whose Priory were taken into the King's hand by reason of the war with the French. The King's presentee was afterwards admitted, and further proceedings were stayed.

¹ From L., Harl., 22,552, and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Easter, 17 Edw. III. R^o 384. It there appears that the *Audita Querela* was brought by John de Hardeshulle, knight, and others, against Gerard, Abbot of Saint

James near Northampton. The Abbot, according to the roll appeared in person, and John de Hardeshulle by attorney. Nothing is said as to a Protection.

² The marginal note subsequent to the word *Querela* is from 25,184 alone. In Harl. it is Execucion sur statut marchaunt.

³ 25,184, Nichole.

⁴ L., retourne.

⁵ Harl., *Cape*.

⁶ Harl., retourne.

⁷ L., ou.

⁸ The words de lexecucion are omitted from L.

⁹ All the MSS. except L., nemye de ceo.

¹⁰ L., saunz.

No. 10.

A.D. 1343. *Audita Querela*.—*Thorpe*. If the parol were without day you would never sue a Resummons, nor shall we have it.—*Seton*. They say that the Protection does not lie on the suit which they make to have execution on the statute, because we have not a day; that proves that it does lie on the *Audita Querela*, because our suit is to no other purpose but to make us party to him in order to prevent his execution.—*SHARDELOWE*. You never saw a Protection allowed for a plaintiff, unless it were in Replevin after avowry.—*Pole*. In Appeal also.—*SHARSHULLE*. Will you maintain your suit?—*Pole* made *profert* of an indenture of defeasance, in which certain covenants were expressed, and said "They have been kept on our part."—*Thorpe*. This deed is supposed to be in defeasance of a statute merchant made on the Wednesday next after the Feast of St. Matthias in a certain year, and we do not demand execution of any such statute which was made on any

No. 10.

Laudita Querela.—*Thorpe.* Si la parole fut¹ sanz jour A.D. 1343. vous ne suerez² jammes Resomons, ne nous laveroms pas.—*Setone.* Ils diount qe la Proteccion ne gist pas a la suyte qils fount daver execucion sur lestatut, pur ceo qe nous navoms pas jour; ceo prove qil gist en le *Audita Querela*, qar nostre suyte nest a autre effecte mes de nous faire partie a luy a destourber sa execucion.—*SCHARD.* Unques ne veistes Proteccion allowe pur pleintif, si ceo ne fut¹ en *Replegiari* apres avowere.—*Pole.* En Appel auxi.³—*SCHAR.* Voillez meyntener vostre suyte?—*Pole* mist avant lendenture de⁴ defesaunce, qe voleit certains covenants, &c., et dit qils furent tenus de lour part.⁵—*Thorpe.* Cel fait est suppose en defesaunce dun estatut fait le Merkerdy proschein apres⁶ le Feste de Seint Mathi⁷ certain an, et nous demandoms execucion de nul tiel⁸ estatut qe se fist

[Fitz.,
Protec-
cion, 50].

¹ L., soit.

² 25,184, serretz.

³ Harl., auxci.

⁴ L., and 25,184, en.

⁵ The deed in defesance of the statute merchant is in French, and is set out at full length in the roll. It is dated at Northampton, on Thursday next after the Feast of St. Matthias the Apostle, 16 Edward III. It is to the effect that an agreement was made between the Abbot, of the one part, and John de Hardeshulle and Maud his wife (in respect of a fourth part of the advowson of two parts of the church of Rode), and Roger Chauceux, parson (in respect of a third part of the same church, and as to spoliation of tithes of the same fourth part), of the other part, so that if John and Maud should appear on that day in the King's Court at Westminster, at the

Abbot's suit, to a certain writ of Right in respect of a fourth part of the advowson of two parts of the church and plead with the Abbot in the form more fully set out in the deed, and perform the other matters contained in the deed, the recognisance should be held null. "Et dicunt quod ipsi parati fuerunt apud Westmonasterium ad diem illum coram Justiciariis parati in omnibus præmissa tenuisse, et prædictus Abbas ad breve suum prædictum fuit non prosecutus, ita quod in prædictis Johanne et Matildi non remansit quin ea quæ in scripto prædicto sunt contenta perficerent, nec aliquis defectus in eis inveniebatur."

⁶ 22,552, and 25,184, avant.

⁷ All the MSS. except 22,552, Martyn.

⁸ tiel is omitted from 25,184.

No. 10.

A.D. 1343. such day; judgment, and we pray execution.—

Moubray. The deed agrees in the names, and in the quantity, with the amount contained in the statute; and the deed does not suppose that the statute was made on the Wednesday next after the execution of the deed, but on the Wednesday before the execution, which might be one or two years previously; and, inasmuch as you do not allege that there was any other statute in defeasance of which this deed could be, judgment.—*STONORE.* Say something towards an agreement, &c.

No. 10.

autiel jour; jugement, et prioms execucion.¹—*Moubray. A.D. 1343.*
 Le fait sacorde en nouns, et quantite² de la somme
 compris deinz lestatut; et le fait ne suppose pas
 qe lestatut se fist le Merkerdy proschein apres³ la
 fesaunce du fait, mes le Merkerdy avant la fesaunce
 qe purreit estre un an ou deux adevant; et, desicome
 vous nalleghes pas qe autre estatut y avoit en de-
 fesaunce⁴ de quel ceo purreit estre; jugement.⁵—
 STON. Parles de pees, &c.⁶

¹ On behalf of the Abbot it was pleaded, according to the roll,
 "quod ipse, virtute prædicti scripti
 "quod prædictus Johannes profert
 "hic in Curia ab executione sua
 "prædicta de denariis in statuto
 "prædicto recognitionis excludi
 "non debet, quia dicit quod in
 "eodem statuto de prædictis quad-
 "ringentis maris unde, &c., ex-
 "primitur quod idem statutum
 "factum fuit apud Norhampto-
 "niam sexto die Martii anno regni
 "prædicti domini Regis nunc
 "sexto-decimo, et in prædicto
 "scripto indentato continetur quæ-
 "dam data, scilicet quod scriptum
 "illud factum fuit apud Norham-
 "toniam die Jovis proxima post
 "Festum Sancti Matthei Apostoli
 "anno regni prædicti domini Regis
 "nunc sexto-decimo, et etiam in
 "eodem scripto continetur quod
 "statutum de quo in scripto illo
 "fit mencio fieri debuit apud Nor-
 "hamptoniam die Mercurii ante
 "datam illius scripti [the words of
 the deed are "le Meskerdy avaunt
 "la date de cestes endentures,"]
 "ita quod idem scriptum indenta-
 "tum non refert ad statutum
 "prædictum unde idem Abbas petit
 "executionem, nec referre potest
 "quovis modo, unde petit iudicium
 "de prædicto scripto &c., et execu-
 "tionem," &c.

² 25,184, quange.

³ 22,552, avant; 25,184, avant la Feste.

⁴ 22,552, defeisance.

⁵ The report ends here in 22,552, and 25,184.

⁶ On behalf of John de Harde-
 shulle it was pleaded according to
 the roll "quod prædictum scriptum
 "indentatum est idem scriptum
 "quod factum fuit inter prædictos
 "Abbatem et ipsum Johannem et
 "alios, &c., ad adnullandum statu-
 "tum prædictum unde, &c., si
 "iidem Johannes et Matildis et
 "prædictus Rogerus conventiones
 "in eodem scripto contentas ten-
 "uissent. Et dicit quod data
 "scripti illius non est de vigore
 "conventionum seu conditionum
 "prædictarum seu ad executionem
 "prædictam manutenendam, max-
 "ime cum scriptum illud et statu-
 "tum prædictum de summa dena-
 "riorum in statuto illo contento-
 "rum mere concordant. Et præ-
 "dictus Abbas non ostendit aliquod
 "aliud statutum quod ad scriptum
 "prædictum referre possit [unde]
 "petit iudicium si idem Abbas exe-
 "cutionem habere debeat," &c.

Several adjournments follow, but
 nothing further, on the roll.

No. 10.

A.D. 1343. § John Hardeshulle, knight, sued an *Audita Querela* against the Abbot of St. James [of Northampton], out of the Chancery comprising matter to the effect that whereas he had made a recognisance on statute merchant to the said Abbot, and the said Abbot granted that if certain conditions, which he could show to be contained in a certain indenture executed by the said Abbot, were performed on the part of the same John, the recognisance should then lose its force; and he supposed by his writ that he had performed the conditions, and that the Abbot had nevertheless sued execution, contrary to the tenour of the said indentures, wherefore the words of his writ were *quod vocatis coram eis partibus facerent justiciæ complementum*. And upon that writ he had a writ to cause the Abbot to come to answer wherefore he had sued execution contrary to the form of the same indentures, whereupon the Abbot appeared, and on the same day a Protection was produced for John, &c.—*W. Thorpe*. You see plainly how John is plaintiff in this suit, and therefore the Protection cannot be allowed, for if this parol be put without day by reason of this Protection, the parol ought never to be the subject of a Resummons, because he ought not to sue a Resummons in order to delay our execution, which is still partly to be made, and a Resummons will not be granted on our suit because we are not plaintiff; wherefore we do not understand that by reason of this Protection you will put the parol without day.—*Blaykeston*. Although John is plaintiff in this suit, still, having regard to the suing out of execution, which it is his object to defeat, he is defendant; wherefore it seems that the Protection ought to be allowed for him.—*SHARSHULLE*.

No. 10.

§ Johan¹ Hardeshulle, chivaler, suist un *Audita* A.D. 1348. *Querela* vers Labbe de Seint Jaques, hors de la Chauncellerie² compernant tiele matere qe come il avoit fait une reconisaunce sur un statut marchant al dit Abbe, et le dit Abbe graunta qe si certaines condicions, queux il put moustrer comprises en certaine endenture faite³ par le dit Abbe, fuerent parfournes de part mesme cesty Johan qe donques la reconisaunce perdreit sa force; et il supposa par son bref qil avoit parfourné les condicions et ne purquant Labbe avoit suy execucion, countre le tenour des dites endentures, pur quei son bref voleit *quod vocatis coram eis partibus facerent justiciæ complementum*. Et sur ceo bref il avoit bref de faire venir Labbe de respoundre pur quei il avoit suy execucion encountre la forme de mesmes les endentures, ou Labbe vient, et a mesme le jour Proteccion fuit mys avant pur Johan, &c.—*W. Thorpe*. Vous veies bien coment Johan est actour en⁴ cele suyte, par quei la Proteccion ne poet pas estre allowe, qar si ceste parole soit mise sans jour par ceste Proteccion jammes ne deit la parole estre Resomons, qar il ne deit⁵ suyr Resomons pur delaier nostre execucion quele est uncore en partie, et a nostre suyte la Resomons ne serra pas graunte, qar nous ne sumes pas actour; par quei nentendoms pas qe par ceste Proteccion voilles mettre la parole sans jour.—*Bl.* Coment gen ceste suyte Johan est actour, uncore eiant regarde a la suyte de execucion, quele il est a defaire, il est defendant; par quei il semble qe la Proteccion pur luy deit estre allowe.—*Sch.*

¹ This report of the case appears by itself in the old editions as No. 47, with "North" in the margin, which possibly has reference to the Abbot of Northampton. Note 4, p. 17, above is applicable to this report.

² Old editions le bref, instead of la Chauncellerie.

³ Rastell, endentutz faitez, instead of endenture faite.

⁴ Edition of 1679, attourne mesme, instead of actour en.

⁵ Rastell, voet.

No. 11.

A.D. 1343. First of all we wish to know whether John is here or not.—Therefore he caused John to be called.—And, because *Blaykeston* saw that in the opinion of the Court the Protection was not allowable, he caused John to answer by attorney, and made *profert* of the indenture, and did not dare to abide judgment on the Protection.—And the indentures were read, and they purported that, whereas a recognisance was made on a statute merchant, on the Wednesday before the execution of the indenture, to this same Abbot, the Abbot had granted that if John should perform the conditions contained in the indenture, the recognisance should then lose its force, as above. And the indenture bore date the Monday next after the Feast of St. Matthew.—*Grene*. By this indenture he cannot defeat our execution, because the indentures purport that, if John should perform the conditions, a statute merchant made the Wednesday before their execution should lose its force, and now by this matter it is proved that it was made on the 8th¹ day of March, which is a month after the Feast of St. Matthias, and half a year before the Feast of St. Matthew,² so that whether the date of the deed be after, in relation to one Feast, or to another, it cannot refer to this statute of which we have sued execution; wherefore judgment.—*Moubray*. And since the date of the indenture has no effect in fact (for even if it were without date we should have this suit) and since moreover the indenture agrees with this statute in the names of the parties, and in the amounts, and in all other matters, and you do not surmise that there is another statute to which this indenture might refer, judgment how we ought to depart, &c.

Debt (11.) § Edmond Denom brought a writ of Debt

¹ The 6th, according to the record.

² There seems to be some con-

fusion in the reports between the three Saints, Matthias, Matthew and Martin.

No. 11.

Nous voloms primes saver le quel Johan est icy ou A.D. 1343. noun.—Par quei il fist demander Johan.—Et, pur ceo qe *Bl.* veist par lopinion de la Court qe la Proteccion ne fuit pas allowable, il fist Johan respoudre par attourne, et mist avant lendum, et nosa pas demurer sur la Proteccion.—Et les endentures furent lieues,¹ qe voleint qe la ou une reconisaunce fuit fait sur un estatut marchant, le Merkerdi² devant al fesaunce del endenture, a mesme cesty Abbe, Labbe avoit graunte qe si Johan parfournast les condicions contenues en lendum qadonques la reconisaunce perdroit sa force, *ut supra*. Et lendum porta date le Lundi proschein apres le Feste de Seint Mathieu.—*Grene.* Par ceste endenture ne poet il pas nostre execucion defaire, qar les endentures voillent qe si Johan parfournast les condicions qe adonques un estatut marchant fait le Merkerdi² devant la confeccion de. eux perdroit sa force, et ore par ceste matere est prove qil fuit fait le viij jour de March quel est un mois apres le Feste de Seint Matt., et un demi an avant le Feste de Seint Matt., issint qe le quel³ le date del fait soit apres a un Feste ou a un autre, il ne poet referer a cest estatut de quel nous avoms suy execucion; par quei jugement.—*Moub.* Et del houre qe le date del endenture nest rien en effect de fait, qar mesqe il fuit sans date nous averoms ceste suyte, et ove ceo lendum acorde a cest estatut en nouns des parties et des summes, et en toutes autres choses, et vous ne surmettes pas qil ad autre estatut a quei ceste endenture doit referer, jugement coment nous devons departir, &c.

(11.)⁴ § Edmond Denom porta bref de Dette vers Dette

¹ Old editions, liez, or lies.

² Rastell, Martedi.

³ Rastell, quel que.

⁴ From L., Harl., 22,552, and

25,184, but corrected by the record
Placita de Banco, Easter 17 Edw.
III. R^o 198, d. It there appears
that the action was brought by

No. 11.

A.D. 1843. against Richard Scot in respect of £20 on an obligation
on obligation recovered in this Court, notwithstanding an alleged recovery elsewhere on the same deed. Look into this decision. —*Moubray*. We tell you that heretofore, before the Mayor and Bailiffs of Newcastle-on-Tyne, the plaintiff sued against the defendant, by plaint, for the same debt, and recovered, and had execution; ready, &c.; and we demand judgment.—*SHARDELOWE*. He charges you by an obligation; why was it not then cancelled? And you do not produce any acquittance of the debt. —*Moubray*. That is no default of mine; but since satisfaction has been made to him by execution, and not through any folly of mine, it may be accounted that the deed was cancelled, or that I had an acquittance; judgment.—*SHARDELOWE*. The Court adjudges that he

No. 11.

Richard Scot de xxli. par obligacion.—*Moubray*. A.D. 1343. Nous vous dioms qe autrefoitz, devant le Meire et les Baillifs de Noefchastel sur Tyne, le pleintif suyst vers le defendant, par plainte, mesme la dette, et recovers, et avoit execucion; prest, &c.; et demandoms jugement.²—*SCHARD*. Il vous charge par obligacion; pur quei ne fut ceo pas³ dampne adonques? Et vous ne moustrez pas acquitaunce de la dette.—*Moubray*. Ceo nest pas ma⁴ default; mes del houre qe par execucion gree luy est fait, et noun pas par ma folie, poet estre acompte qe le fait fut⁵ dampne, ou qe jeo usse acquitaunce; jugement.—*SCHARD*. Si agarde la COURT qil recovere sa dette

recovers en cest Court sur obligacion, non obstante recovers aillours allegge sur mesme le fet. *Vide in isto statuto*.¹ [Fitz., Barre, 246.]

Judicium.⁶

William de Denum against Richard Scot. According to the declaration the defendant was bound by two several obligations, one for £20, the other for £10.

¹ The marginal note, except the word *Dette*, is from 25,184 alone.

² According to the roll, the plea was "quo ad prædictum scriptum viginti librarum non potest dediciere quin scriptum illud sit factum suum, nec quin ipse tenetur prædicto Willelmo in debito illo. Et quo ad prædictum scriptum decem librarum dicit quod prædictus Willelmus actionem inde versus eum per scriptum illud habere non debet. Dicit enim quod idem Willelmus alias apud villam Novi Castri super Tynam in Curia tenta ibidem . . . coram Maiore et Ballivis ejusdem villæ per querelam de Debito exigebat versus eum prædictas decem libras, et protulit ibidem prædictum scriptum quod nunc profert hic, quod prædictum debitum testabatur, &c., quod quidem scriptum idem Ricardus tunc

"dedixit. Et postmodum pro eo quod compertum fuit per juratam patriæ ibidem quod scriptum illud fuit factum suum considerationem fuit in Curia illa quod idem Willelmus recuperaret versus eum prædictas decem libras; virtute cujus considerationis idem Willelmus habuit executionem ejusdem debiti de bonis et catallis ipsius Ricardi. Et hoc paratus est verificare; unde petit judicium si idem Ricardus de debito prædicto iterato onerari debeat," &c.

To this there was a replication "quod, ex quo prædictus Ricardus cognovit prædictum scriptum esse factum suum, et nihil quod est de recordo ostendit ad exonandum ipsum de prædicto debito in eodem contento, petit judicium, et damna sibi adjudicari."

³ The words *ceo pas* are omitted from 25,184.

⁴ *ma* is omitted from L.

⁵ All the MSS. except L., *ne fut*.

⁶ The marginal note is from Harl., alone.

No. 12.

A.D. 1848. do recover his debt and damages assessed by the Court. And sue now that the deed be cancelled, &c.

Dower. (12.) § Dower.—*Richemunde*. We tell you that one
 And note that an A., her husband's father, died seised, and, after his
 entry on the death, her husband who was born before the marriage,
 the bastard by the and so a bastard, intruded. We, as son and heir,
 mulier is being mulier, ousted him; judgment whether in re-
 sufficient spect of such an estate she ought to have dower.—
 to found an objection. *Moubray*. He has admitted the seisin of my husband,
 and has not disproved that estate by record, nor in
 any other way to which the law puts me to answer;

No. 12.

et damages taxes par la Court. Et suez ore¹ qe A.D. 1343. le fait soit dampne, &c.²

(12.)³ § Dowere.—*Richem.* Nous vous dioms qun A., pere⁵ son baroun,⁶ morust seisi, apres qi mort son baroun qe nasquist avant les esposailles,⁷ et issint bastarde, sabatist. Nous, come fitz et heire muliere,⁸ luy oustames; jugement si de tiel estat deive dowere aver.⁹—*Moubray.* Il ad conu la seisine mon baroun, et nad pas desprove cel estat par recorde, ne par autre voye¹⁰ a quei ley moy mette a respoundre;

Dowere.
Et nota un
entre sur
le bastard
par le
muliere
est assez
doner
reclamer.⁴

¹ 25,184, oco.

² Judgment was given as follows:—"Quia prædictus Ricardus "expresse cognovit scriptum prædictum esse factum suum, et "nihil ostendit Curie in adnullationem vel evacuationem ejusdem, nec aliud dicit quod ipsum "de debito illo rationabiliter "exonerare poterit, consideratum "est quod prædictus Willelmus "recuperet versus eum tam prædictas decem libras in scripto contentas quam prædictas viginti libras in alio scripto contentas, et damna sua quæ taxantur per "Justiciarios ad decem marcas. . . " . . . Et sciendum quod scripta "prædicta cancellantur hic in "Curia," &c.

³ From L., Harl., 22,552, and 25,184, but corrected by the record *Placita de Banco*, Easter 17 Edw. III, R^o 306, d. It there appears that the action was brought by William de Popeley, and Sibyl his wife, against Hugh son of Thomas de Totehille, in respect of a third part of 12 acres of land, 3 acres of meadow, and 16s. of rent in Rastrick and Hipperholme (Yorkshire) as Sibyl's dower, of the en-

dowment of William de Totehille her late husband.

⁴ The marginal note, except the word Dowere, is from 25,184 alone.

⁵ L., and Harl., launcestre.

⁶ 25,184, son pere, instead of pere son baroun.

⁷ L., esposaiels.

⁸ Harl., mulure; 22,552, muliere.

⁹ The plea, according to the roll, was that Sibyl ought not to have dower "quia quidam Thomas de "Totehille fuit seiscitus de prædictis "tenementis unde &c., in dominico "suo ut de feodo et jure, qui "quidem Thomas de eisdem tenementis cum pertinentiis obiit "seiscitus, post cujus mortem idem "Hugo intravit in prædictis tenementis ut filius ejus et heres. "Et prædictus Willelmus, ex cujus "dotatione, &c., intravit super "possessionem ipsius Hugonis, "clamando prædicta tenementa ut "filius et heres ipsius Thomæ, ubi "idem Willelmus natus fuit ante "omnia desponsalia, et petit judicium si prædicti Willelmus de "Popeley et Sibilla dotem ipsius "Sibillæ de tali statu habere "debeant."

¹⁰ L., manere.

No. 12.

A.D. 1343. judgment, &c.—*Seton*. Then is it so?—*Moubray*. We tell you that it is quite true that the common ancestor died seised, and after his death our husband, who was the eldest son, entered as heir, and held beyond, and died seised, without having any objection against him during his life; judgment whether you shall be admitted to disaffirm his estate.—*KELSHULLE*. In a case of dower a woman could hardly have need to do anything else but aver the estate of her husband.—*Richemunde*. We tell you that we entered, as above, and thus an objection was made against your husband; judgment whether we shall not be admitted to bastardise him.—*Moubray*. Then you do not deny that he died seised; and in respect of that estate the woman is dowable.—*Richemunde*. We entered, as above, without this that he ever had anything afterwards; ready, &c.—*Moubray*. Our husband died seised; ready, &c.—And the other side said the contrary.

No. 12.

jugement, &c.—*Setone*. Donques est il issint?—A.D. 1848.

Moubray. Nous vous dioms qe bien est verite qe le comune auncestre morust seisi, apres qi mort nostre baroun, qe fut fitz eigne, entra come heir,¹ et outre² tynt, et morust seisi, sanz estre reclame en sa vie; jugement si a desaffermer son estat serrez resceu.³—*Kels*. A peyne si femme,⁴ en cas de dowere, averoit mester dautre chose faire qe daverer lestat son baroun.—*Richem*. Nous vous dioms qe nous entrames *ut supra*, issint fut vostre baroun⁵ reclame; jugement si nous ne serroms resceu de luy bastarder.—[*Moubray*. Donques ne dedites vous pas qil morust seisi, de quel estat la femme est dowable.—*Richem*. Nous entrames, *ut supra*, sanz ceo qil avoit unques rien puis; prest, &c.]⁶—*Moubray*. Nostre baroun morust seisi; prest, &c.—*Et alii e contra*.⁷

¹ The words come heir are omitted from L.

² Harl., and 22,552, outre et; 25,184, eust et, instead of et outre.

³ The replication, according to the roll, was "quod prædictus Willelmus de Totehille, quondam vir, &c., ex cujus dotatione, &c., intravit in prædictis tenementis post mortem ipsius Thomæ de Totehille, ut filius ejus et heres antenatus, et de eisdem tenementis obiit seiscitus in dominico suo ut de feodo, absque hoc quod prædictus Hugo intravit in prædictis tenementis ut filius ejus et heres, sicut prædictus Willelmus de Popeley et Sibilla dicunt, et

"hoc parati sunt verificare, unde petunt judicium."

⁴ Harl., homme.

⁵ L., soun estat, instead of vostre baroun.

⁶ The words between brackets are omitted from 22,552.

⁷ According to the roll there was a rejoinder on behalf of Hugh "quod prædictus Willelmus de Totehille quondam vir, &c., ex cujus dotatione, &c., non obiit seiscitus de prædictis tenementis in dominico suo ut de feodo sicut prædicti Willelmus de Popeley et Sibilla dicunt." It was upon this that issue was joined. The award of the *Venire* follows, but nothing more.

No. 18.

A.D. 1343. (13.) § Formedon brought against four persons in
 Formedon common.—*Blaykeston*. As to one, he has nothing.
 in the Descender And as to others *Blaykeston* shewed how they took
 against several the profits in common, but held by several purchases;
 persons as judgment of this writ which is brought against them
 tenants in common.—*Seton*. We will aver our writ.—*SHARDE-*
 who LOWE. You must plead to that which he has said,
 admitted the because in a manner he admits the tenancy in
 the tenancy to common, but in respect of such tenancy several writs
 be such, lie on account of the warranty; but if you will say
 but with "tenants in common, without this that they hold by
 several titles, and several titles," you can well have the averment, but
 they demanded not in general terms.—To this the Court agreed.—
 judgment of the writ, *Grene*. Although the three plead in abatement of the
 &c. writ, the fourth tells you that he is tenant in accord-
 ance with the writ, and that they are tenants in
 common; and he will not plead in that manner, and
 he tells you, as to his portion, that the alleged donor
 did not give; ready, &c.—*Richemunde*. And since he
 is in accordance with the writ, but varies from the
 others in his answer, judgment; and we pray seisin

No. 18.

(18.)¹ § Fourmedoun porte en comune² vers iiij. A.D. 1343.
 —*Blaik.* Quant a un il nad rien. Et quant as autres il moustra coment ils pristerent les profits en comune, mes ils teignent par several purchase; jugement de ceo⁴ bref porte⁵ en comune.⁶—*Setone.* Nous voloms averer nostre bref.—*SCHARD.* Il covient que vous pledez a ceo qil ad⁷ dit, qar en manere il conust la tenance en comune, mes de tiele tenance several bref gist⁸ pur la garrantie; mes si⁹ vous voillez dire que tenantz en comune, sanz ceo qils teignent par several title, vous averez bien lavement, mes generalment¹⁰ nient.—*Ad quod CURIA consensit.*—*Grene.* [Coment que les iij pledent al bref abatre, le quart vous dit qil est tenant acordaunt¹¹ au bref, et qils sont]¹² tenants en comune; et il ne voet pas¹³ pleder par la manere, mes vous dit, quant a sa¹⁴ porcion, qil ne dona pas; prest, &c.—*Richem.* Et desicome il acorde¹⁵ au bref, et varie en son¹⁶ respons des altres, jugement; et prioms seisine

Descen-
dre vers
plusours
com
tenantz
en
comune,
que con-
sont la
tenance
tiel, mes
several
title, et de-
manderent
jugement
de bref,
&c.³

¹ From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Easter 17 Edw. III. R^o 116. It there appears that the action was brought by Alice and Agnes daughters of John Gerveys against Alice late wife of William Gerveys, and John and Henry her sons, and Richard le Clerk, of West Farleigh. According to the writ and count Gervase de Grofherst gave certain tenements in Yalding (Kent) to William son of Gervase de Grofherst and Alice in special tail. "Et de ipsis Willelmo et Alicia uxore ejus descendit jus per formam, &c., cuidam Johanni ut filio et heredi &c., et de ipso Johanne, quia obiit sine &c., jus per formam præfatis Aliciæ filiæ Johannis et Agneti filie ejusdem Johannis, ut con-

"sanguineis et heredibus prædictorum Willelmi et Aliciæ," &c.

² The marginal note, except the word Descendre, is from 25,184 alone. In L., and Harl., it is Fourme de Doun.

³ L., en Comune Baunke.

⁴ ceo is omitted from L., and Harl.

⁵ 22,552, qe est.

⁶ The words porte en comune are omitted from L., and Harl.

⁷ ad is from L. alone.

⁸ L., girreit.

⁹ si is omitted from L.

¹⁰ 25,184, severallment.

¹¹ Harl., and 22,552, et sacorde.

¹² The words between brackets are omitted from 25,184.

¹³ pas is from L. alone.

¹⁴ 25,184, ceo.

¹⁵ L., acorda.

¹⁶ son is omitted from L.

No. 13.

A.D. 1343. of the land.—*Grene*. If the others were willing either to render the demand, or to lose by default, would not he be admitted to traverse the action?—*SHARDELOWE*. It would be hard law otherwise.—And as to the three *Seton* was put by the COURT to maintain his writ, to wit, that they held in common, without this that they held by several titles, as they had said.—And the other side said, on the contrary, that they held by several titles, as they (the other side) said.—And as to him who agreed with the writ, and traversed the action, *Seton* maintained the writ against him, to the effect that the alleged donor did give, on account of the opinion of the COURT, which said that, if he did not do so, he would lose his action.—*Grene*. Now we demand judgment of the writ, since he has supposed the tenancy to be in common, and he has pleaded to one of them severally as against sole tenant.—*HILLARY*. He must do so.—*Seton*. And since he does not maintain his action against that one who pleads to him, and has agreed with his writ, judgment how we are to depart.—*Pulteney*. If a writ be brought against two persons, and one appears, and says that he is sole tenant, ready to plead, and the other admits the tenancy in common, and is willing to plead to the action in respect of his portion, shall not the writ be abated unless the demandant maintain it? And this is the case now.—*HILLARY*. No, it will not be so; no one shall lose another's portion by mispleading, but the issue on the abatement of the writ serves for all purposes, as soon as there shall be a finding; but he who agrees to the writ shall not thereby be ousted from his answer.

No. 13.

de terre.—*Grene*. Si les autres voudrunt¹ rendre² A.D. 1343. ou perdre [par default, ne serra il resceu a traverser laccion ?]³—*SCHARD*. Autrement serreit dure ley.—Et quant a les iij *Setone* fut mys par Court⁴ de meyntener son bref, saver qils tiendrent en comune, sanz ceo qils tiendrent par severals titles, come ils avoient dit.—*Et alii e contra*, qils tiendrent par several title,⁵ come ils diount.—Et quant a celui qe sacorda au bref, et qe traversa laccion, *Setone* vers luy meyntient son bref qil dona, *propter opinionem* CURLE, qe dit qe sil nel ust fait il perdroit saccion.—*Grene*. Ore nous demandoms jugement du bref, del heure qil ad suppose la tenance en comune, et il come vers soul tenant severalment ad plede al un deux.—*HILL*. Auxi covient il qil face.—*Setone*. Et desicome il meyntent pas saccion vers cesty qe plede a luy, et qe sacorda a son bref, jugement coment nous devons departir.—*Pult*. Si bref soit porte vers deux, et lun vint et⁶ dit qil est soul tenaunt, prest a pleder, et lautre conust la tenance en comune, et voet pleder al accion de sa porcion, ne serra le bref abatu si le demandant nel meyn-teigne? Et cest le cas a ore.—*HILL*. Noun, il ne serra pas issint; nul ne perdra autri porcion⁷ par mespleder, mes lissu sur labatement du bref seert⁸ a tout, quant⁹ il serra trove; mes par taunt¹⁰ cestui qe sacorde au bref ne serra pas ouste de son respons.¹¹

¹ 25,184, vyendrent.² 22,552, respondre.³ The words between brackets are omitted from 25,184.⁴ The words par Court are omitted from L., and 22,552.⁵ All the MSS. except L., en severalte, instead of par several title.⁶ The words vint et are from Harl., alone.⁷ L., possession.⁸ L. sert.⁹ 25,184, et quant.¹⁰ 25,184, mespernaunt, instead of mes par taunt.¹¹ According to the record the following were the pleadings in this case:

"Johannes dicit quod ipse nihil
 "habet ad præsens in libero tene-
 "mento prædictorum tenemen-
 "torum," &c.

"Alicia dicit quod
 "levavit quidam finis inter Johan-
 "nem filium Willelmi Gerveys,

No. 14.

A.D. 1343.

Fine on
the grant
of the
reversion
of the
grantor's
termor.

(14.) § A. acknowledged certain tenements to be the right of B., and granted that the same tenements, which one C. held by his lease for a term of three years, and which, after the term, were to revert to A. and his heirs, should remain to B. and his heirs for ever, yielding, after the term, to A. a certain rent for his life.—SHARDELOWE. How can one who has nothing reserve a certain rent to himself?—*Stouford*. A freehold passes by such a grant of a reversion, in which case one can reserve a rent, and this has been often seen.—SHARDELOWE. You never saw that one who divested himself of any land by fine could charge the same land in his own favour.

"juniozem, et Henricum et Wille-
"mum fratres ejusdem Johannis
"querentes, et Willelmum Gerveys
"deforciantem, de prædictis tene-
"mentis modo petitis, unde placitum
"conventionis summonita
"fuit inter eos . . . scilicet quod
"prædictus Willelmus Gerveys
"recognovit prædicta tenementa
"cum pertinentiis esse jus ipsius
"Johannis, et illa eisdem Johanni,
"Henrico, et Willelmo filio Willelmi
"reddidit . . . habenda et
"tenenda eisdem Johanni, Henrico,
"et Willelmo, et heredibus
"ipsius Johannis in perpetuum,
"qui quidem Johannes de parte
"sua ipsum contingente de eisdem
"tenementis postea feoffavit prædictos
"Willelmum Gerveys et
"Aliciam tenendis ad terminum
"vitæ suæ; et etiam prædictus
"Henricus de parte sua ipsum contingente
"de eisdem tenementis
"feoffavit eosdem Willelmum et
"Aliciam tenendis ad terminum
"vitæ suæ, &c., et sic dicit quod
"ipsa tenet duas partes prædictorum
"tenementorum post mortem
"prædicti Willelmi quondam
"viri sui separatim, &c., per

"feoffamenta prædicta, capiendo
"inde proficua in communi cum
"prædicto Ricardo, qui statum
"prædicti Willelmi filii Willelmi
"habet in prædictis tenementis, et
"non conjunctim, &c., sicut prædictæ
"Alicia filia Johannis et
"Agnes per brevesuum supponunt;
"et hoc parata est verificare; et
"petit judicium de brevi," &c.

"Et Henricus et Ricardus dicunt
"quod ipsi tenent tenementa prædicta
"conjunctim cum prædictis
"Alicia quæ fuit uxor Willelmi et
"Johanne &c., sed dicunt quod
"prædictæ Alicia filia Johannis et
"Agnes nihil juris clamare possunt
"in tenementis illis quia dicunt
"quod prædictus Gervasius non
"dedit tenementa illa in forma
"prædicta sicut ipsæ per breve
"suum supponunt, et hoc prætendunt
"verificare, et petunt judicium," &c.

The replication was "quod
"prædicta Alicia quæ fuit uxor
"Willelmi tenet tenementa prædicta
"conjunctim cum prædictis
"Johanne, Henrico, et Ricardo,
"sicut ipsæ per breve suum
"supponunt, et tenuit die impetra-

No. 14.

(14.)¹ § A. conust certains tenements estre le A.D. 1343. dreit B., et graunta qe mesmes les tenements, qun C. tient de soun lees a terme de iij auns, et les queux, apres le terme,² a A. et ses heirs deivent³ revertir, remeindreint a B.⁴ et ses heirs a touz jours, rendaunt, apres le terme, a A.,⁵ pur sa vie, certain rente.—SCHARD. Coment poet celuy qe nad rienz reserver certain rente a luy?—*Stouf*. Franktenement passe⁷ par tiel graunt de reversion, en quel cas homme poet reserver rente, et ceo ad este viewe sovent.—SCHARD. Unqes ne veistes qe celuy qe se demist dune terre par fyn purreit charger mesme la terre a luy mesme.

"tionis brevis et non
"separatim per feoffamenta præ-
"dictorum Johannis et Henrici in
"forma qua ipsa placitando alle-
"gavit." Issue joined thereon. "Et
"quo ad hoc quod prædicti Henri-
"cus et Ricardus dicunt quod præ-
"dictus Gervasius non dedit præ-
"dicta tenementa in forma præ-
"dicta eadem Alicia filia Johannis
"et Agnes dicunt quod prædictus
"Gervasius dedit tenementa præ-
"dicta prædictis Willelmo filio
"Gervasii et Aliciæ uxori ejus in
"forma prædicta sicut ipse per
"breve suum supponunt." Issue
joined thereon.

Upon default of Alice late wife of William Gerveys, on the day given, a third part of the tenements was taken into the King's hand, and she was summoned to hear judgment, but again made default.

Then "Johannes dicit quod
"eadem Alicia quæ fuit uxor
"Willelmi tenet unam medietatem
"prædictæ tertie partis ad ter-
"minum vite sue ex dimissione
"sua, et aliam medietatem ex
"dimissione prædicti Henrici, re-

"versione utriusque medietatis,
" &c., ad ipsum Johannem post
"mortem ipsius Aliciæ spectante,
"et petit admitti ad defensionem
"juris sui," &c.

"Et Alicia filia Johannis et
"Agnes dicunt quod prædicta
"Alicia quæ fuit uxor Willelmi
"nunquam aliquid habuit in præ-
"dicta tertia parte ex dimissione
"ipsorum Johannis et Henrici,
"per quod idem Johannes admitti
"non debet," &c. Issue joined
"thereon, John finding sureties
"for the mesne profits."

"Postea . . . anno
"vicesimo, viso per Curiam recordo
"istius placiti, compertum est quod
"discontinuatur, &c. Ideo nihil
"flat inde ulterius," &c.

¹ From L., Harl., 22,552, and 25,184.

² The marginal note, except the word *Finis* is from 25,184 alone.

³ The words *le terme* are omitted from L.

⁴ L., *dussent*; 22,552, *devereint*.

⁵ 25,184, A.

⁶ 25,184, A. et ses heirs.

⁷ L., and 25,184, *passa*.

No. 15.

A.D. 1343. (15.) § A writ of Trespass was brought against John de Beresford, and John son of Adam de Beresford, and others, who answered by attorney, in respect of wood cut and carried away, and other goods and chattels, to wit, nuts; and they imparled on the count. —*Grene*. We tell you that John de Beresford, and John son of Adam de Beresford are one and the same person, and so he is twice named; judgment of the writ.—*Richemunde*. You shall not be admitted to that, for you have answered by attorney for the one and for the other, accepting them to be different persons; judgment whether it lies in your mouth. But if he had appeared in his own person it would be otherwise.—*Notton*. One who is attorney cannot say that his principal is misnamed, because he is made attorney under such a name; but if his principal be twice named in the writ with a diversity of surname, and has made him attorney under both names, then he can say that it is all one and the same person, because that is not contrary to the making of the warrant of attorney.—*SHARDELOWE*. Certainly, by the making of an attorney under different names it is accepted that they are different persons.—*Grene*. We

A.D. 1343. Trespass. And note, out of this plea, that, if any one be twice named in a writ, and if he make an attorney under both names, the attorneys cannot deny that it is one person on account of the several warrant in respect of which they cannot be in disagreement.

No. 15.

(15.)¹ § Bref de Trespas² fut porte vers Johan A.D. 1343.
 de Beresforde, et Johan fitz Adam de Beresforde, Trespas.
 et autres, qe respondirent par attourne, de bois coupe *Et nota, ex isto*
 et emporte, et autres biens et chateux, saver, noys; *placito, qe,*
 et enparlerent sur le count.⁴—*Grene.* Nous vous bref
 dioms qe Johan de B. et Johan fitz Adam de B. homme
 est une mesme persone, issint est il deux foitz soit ij foitz
 nome; jugement du bref.—*Richem.* A ceo ne serrez face
 resceu, qar vous avez respondu par attourne pur lun attourne a
 et pur⁵ lautre, acceptaunt qils sount divers⁶ persones; lautre, qe
 jugement si en vostre bouche gise.⁷ Mes sil fut en les
 propre persone autre serreit.—*Nottone.* Celuy qest ne pount
 attourne ne poet pas dire qe son mestre [est mes- nient
 nome, pur ceo qil est fait attourne [par tiel noun; qils sount
 mes si son mestre]⁸ soit deux foitz nome en le une per-
 bref par diversite⁹ de surnoun, et luy ad fait at- le several
 tourne]¹⁰ par¹¹ lun noun¹² et lautre,¹³ et il poet dire garraunt
 qe tout est une mesme persone, qar ceo nest pas en¹⁴ de quel
 contrarie¹⁵ de la fesaunce del garraunt dattourne.— pount
 SCHARD. Certes, par fesaunce dattourne par divers des-
 nouns est accepte qe ces sount divers persones.—*Grene.* &c.²

¹ From L., Harl., 22,552, and 25,184, but corrected by the record *Placita de Banco*, Easter 17 Edw. III. R^o 250. It there appears that, the action was brought by Walter Folvyll against John son of Adam de Beresford and Thomas son of Adam de Beresford, for that they, together with John de Beresforde and others, broke the plaintiff's close at Werselowe (Warslow, Staffordshire) and cut down and carried off his trees, to wit oak-trees, ash-trees, hazels, and whitethorns. There is nothing in the roll touching the identity of John de Beresforde with John son of Adam de Beresforde.

² The marginal note, except the word *Trespas*, is from 25,184 alone.

³ The words *de Trespas* are omitted from L., and Harl.

⁴ Harl., *la couper*, instead of *le count*.

⁵ *pur* is from L. alone

⁶ 22,552, *diverses*.

⁷ L., *igise*.

⁸ The words between brackets are omitted from 22,552.

⁹ 22,552, *divers temps*.

¹⁰ The words between brackets are omitted from L.

¹¹ L., *pur*.

¹² noun is omitted from L., and Harl.

¹³ L., *pur lautre*.

¹⁴ Harl., *a*.

¹⁵ L., *countre*.

No. 15.

A.D. 1348. speak of that only for the law, but John son of Adam is not by attorney.—*Richemunde*. We take the record to witness that he answered by attorney.—*SHARDELOWE*. What of that? We will see whether he have a warrant in the roll.—And it was found that he had no warrant in the roll, but a warrant only for John de Beresforde and John son of this same John who is not named in the writ.—*Richemunde*. Inasmuch as John son of Adam de Beresforde has gone out to imparl, and returned, and answered nothing, judgment against him.—*SHARDELOWE*. You cannot have any advantage from that, inasmuch as it is found that he had no warrant.—*Richemunde*. Then we pray that you record his default.—*Notton*. That cannot be when he is in Court, for thus he might possibly be outlawed and acquitted on one and the same writ.—*Richemunde*. It is his default that he did not appear in his own person.—*Pole*. We take the record of the Court to witness that he answered by attorney.—*SHARDELOWE*. That is true; but, notwithstanding that, we have searched the roll, and we find that there is no warrant for him; wherefore you cannot take advantage of that.—*Pole*. You do not know whether he has any warrant or not, for his warrant is possibly entered in another roll, and it is not for you to know that, unless exception were taken by us; and we pray the law, since he against whom we counted has answered by attorney, and now he does not answer; judgment. And, Sir, if his attorney has no warrant, he has his recovery against him by writ of Deceit.—*HILLARY*.

No. 15.

Nous ne parloms de ceo forsque pur la ley, mes A.D. 1843.
 Johan fitz Adam nest pas par attourne.—*Richem.*
 Nous pernoms recorde¹ qil respondi² par attourne.
 —SCHARD. De ceo quei³? Nous verroms sil eit
 garraunt⁴ en roulle.⁵—Et fut trove qil navoit pas
 garraunt en roulle, mes garraunt⁶ soulement pur
 Johan de Beresforde et Johan fitz mesme cely Johan
 qe⁷ nest pas nome el bref.—*Richem.* Desicome Johan
 fitz Adam de B. est issu denparler, et revenu, et
 rien respondi, jugement vers luy.—SCHARD. De ceo
 ne poiez aver avauntage, desicome homme trove qil
 navoit⁸ pas garraunt.—*Richem.* Donques prioms qe
 vous recorder sa default.—*Nottone.* Ceo ne poet estre
 quant il est en Court, qar issint serreit il utlage
 et acquite a un mesme bref par cas.—*Richem.* Cest
 sa default⁹ qil nust venuz en propre persone.—*Pole.*
 Nous pernoms recorde¹⁰ de Court qil respondi¹¹ par
 attourne.—SCHARD. Cest verite; mes, ne mye de
 ceo, nous avoms enquis¹² roulle, et trovoms¹³ qil
 nad pas garraunt pur luy; par quei vous ne poiez
 prendre avauntage de cel.—*Pole.* Vous ne savez sil
 eit garraunt ou noun, qar son garraunt par cas est
 entre¹⁴ en autre roulle, et ceo nest pas a vous a
 saver, sil ne fut chalange par nous; et nous prioms
 la ley, del houre qe par attourne il ad respondi, vers
 qi nous countames,¹⁵ et il ne respond pas; jugement.
 Et, Sire, si son attourne nad pas garraunt, il ad son
 recoverir vers luy par bref de Desceite.—HILL.

¹ L. par recorde.² 25,184, respouny.³ The words De ceo quei? are omitted from L.⁴ 25,184, garrauntie.⁵ The words en roulle are from L., alone.⁶ garraunt is omitted from L.⁷ qe is omitted from L.⁸ L., and Harl., nad.⁹ The words cest sa default are omitted from 25,184.¹⁰ L., recorde de recorde.¹¹ 22,552, respondist; 25,184, respouny. In all the MSS. except L., the words pur luy are inserted after respondi.¹² 22,552, quis.¹³ L., trovames.¹⁴ entre is from 22,552 alone.¹⁵ L., countassames.

No. 15.

A.D. 1343. You speak in vain; you shall not now have your purpose against him in this matter.—*Pole*. They are different persons; ready, &c.—*Grene*. Whereas he supposes that we came and cut, &c., we tell you that by reason of a messuage which we hold in the same vill we have estovers in the same wood, and a certain gathering of nuts, as appendant to the same messuage, and this we and the tenants of the same messuage have used from all time, &c., and we tell you that we cut our estovers and gathered nuts in a reasonable manner, &c.; judgment whether tort, &c.—*Richemunde*. It is our several wood, without this that you and the tenants of the messuage from all time have had this reasonable right; ready, &c.—And the other side said

No. 15.

Vous parlez en veyn; vous naverez pas vostre pur. A.D. 1343.
 pos a ore¹ vers luy en cest matere.²—*Pole.* Ils
 sont divers³ persones; prest, &c.⁴—*Grene.* La ou
 il suppose qe nous venimes⁵ et coupames, &c., nous
 vous dioms qe par resoun dun mies⁶ quel nous
 tenoms en mesme la ville nous avoms estovers en
 mesme le bois, et certain quillet⁷ de noys,⁸ come
 appendaunt a mesme le mies,⁹ et ceo nous et les
 tenauntz de mesme le mies avoms usee⁹ de tout
 temps, &c., et vous dioms qe nous coupames nos
 estovers et quillames de noys⁸ par resonablete, &c.;
 jugement si tort, &c.¹⁰—*Richem.* Cest nostre several
 boys, sanz ceo qe vous avez cele resonablete, et les
 mies tenaunts de tout temps; prest, &c.—*Et alii e*

¹ The words a ore are from L. alone.

² 22,552, materie; 25,184, manere.

³ L., diversez.

⁴ The report ends here in 22,552.

⁵ L., venissoms.

⁶ L., mesoun; 25,184, mees.

⁷ Harl., quillet; 25,184, quilte.

⁸ L., noitz.

⁹ L., eu.

¹⁰ The words jugement si tort &c., are omitted from 25,184. In the roll the plea appears as follows:—

“Et Johannes et Thomas per
 “attornatum suum veniunt et
 “defendunt vim et injuriam
 “quando &c. Et idem Johannes
 “dicit quod ipse habet in prædicta
 “villa tria mesuagia et tres bovatas
 “terræ ad quas ipse habere debet
 “rationabilia estoveria in bosco
 “prædicti Walteri in eadem villa
 “et similiter nuces pro se et
 “familia sua, capienda ad volun-
 “tatem ipsius Johannis sine visu
 “vel liberatione forestarii, &c., et
 “ad ardendum, edificandum, et

“claudendum, &c., de quibus
 “estoveriis ipse, et omnes ante-
 “cessores sui, et illi qui prædicta
 “mesuagia et terram tenuerunt, a
 “tempore quo non extat memoria,
 “habuerunt estoveria prædicta in
 “prædicto bosco tanquam perti-
 “nentia, &c. Et dicit quod ipse
 “prædictis die et anno quibus
 “prædictus Walterus queritur, &c.,
 “abores prædictas in prædicto
 “bosco succidit, et nuces prædictas
 “cepit pro se et familia sua, et illas
 “asportavit ut estoveria sua ad
 “prædicta tenementa sua pertinen-
 “tia, sicut ei bene licuit, absque
 “aliqua injuria contra pacem præ-
 “fato Waltero facienda unde petit
 “judicium si ipse per hoc actionem
 “de transgressione versus eum
 “manutenere possit, &c. Et
 “Thomas dicit quod ipse venit in
 “auxilium cum prædicto Johanne
 “ad capiendum estoveria sua præ-
 “dicta, absque hoc quod ipse ali-
 “quid fecit contra pacem, sicut
 “prædictus Walterus dicit.”

No. 16.

A.D. 1343. the contrary.—SHARDELOWE. Certainly you must rely on your writ that he came against the peace, and you can say further “without this that he has estovers there.”—GRENE. We are at issue out of the point of the writ, and that is permissible by law, for one has seen issue to be taken in such a case on the denial of a deed, and aid to be granted when estovers have been claimed by specialty.—SHARSHULLE. Yes, a specialty puts one to answer out of the point of his writ, but not matter which is a question of fact where the plaintiff should rely upon his writ.—Therefore *Richemunde* joined issue according to SHARDELOWE’s direction, as above.—And the other side said the contrary.

Ravish-
ment of
Ward.

(16.) § Ravishment of Ward.—The defendant alleged

No. 16.

contra.—SCHARD. Certes il covient relier sur vostre A.D. 1343.
bref qil vint coudre la pees, et vous poiez dire
oultre, sanz ceo qil eit estovers illoques.—Grene.
Nous sumes a issue hors de point du bref, et cest
suffrable par ley, qar homme ad vewe issue estre
pris en tiel cas sur dedire dun fait, et eide estre
graunte quant homme clama estovers par especialte.
—SCHAR. Oyl, especialte mette homme hors de soun
bref a respoudre, mes chose qe chiet en fait nient
qe le pleintif deit¹ relier sour son bref; par quei
Richem. joint lissue come SCHARD. dit, *ut supra*.—
Et alii e contra.²

(16.)³ § Ravissement de Garde.—Le defendant alleggea Ravise-
ment de
Garde.

¹ L., and Harl., ne deit.

² According to the roll, the replication, upon which issue was joined was as follows:—"Walterus
"dicit quod ipse est dominus villæ
"prædictæ, et quod prædicti
"Johannes et Thomas, simul &c.,
"fecerunt ei prædictam transgres-
"sionem contra pacem, sicut ipse
"superius queritur, absque hoc
"quod prædictus Johannes habere
"debet estoveria sua in prædicto
"bosco tanquam pertinentia," &c.

On the day given at *Nisi prius* the defendant Thomas made default, and there was an award of
"Jurata capiatur versus eum per
"defaultam." The verdict was
"quod Johannes filius Adæ de
"Beresforde non habet estoveria
"in prædicto bosco ubi prædictus
"Walterus supponit prædictam
"transgressionem esse factam, nec
"de jure habere debet, et quod
"prædicti Johannes filius Adæ de
"Beresforde et Thomas, simul &c.,
"fecerunt prædicto Waltero præ-
"dictam transgressionem
"ad damnum ipsius Walteri decem

"solidorum. Et super hoc idem
"Walterus asserit se nolle prosequi
"versus alios," &c.

Judgment was given for the plaintiff to recover the 10*s.* damages against the two defendants.

³ From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Easter 17 Edw. III. R^o 123, d. It there appears that the action was brought by Hildebrand de London against John de Seures in respect of the abduction of Laurence son and heir of Roger de Calston.

The declaration was that Roger held the manor of Littlecote (Hants) of the plaintiff, by knight service, by feoffment from John de Erdescote, who held it of the plaintiff, to Roger and his wife Joan in special tail, that, Roger and Joan being dead, the wardship and marriage of Laurence belongs to the plaintiff, and that the defendant carried him off.

The plea was "quod prædictus
"Rogerus de Calston dudum

No. 16.

A.D. 1343 that the infant's ancestor held, by priority of feoffment, of the Earl of Warren, rather than of the plaintiff, (and he showed how) and therefore he, as the Earl's bailiff, seized the infant, and the plaintiff would have taken the infant away, but he did not permit it; judgment.—*Thorpe*. He pleads as keeper of the Earl's fees, in whose mouth such a plea does not lie, inasmuch as he does not affirm any right in his own person, and particularly in this case in which the words of the Statute¹ are *si quis jus non habens*, &c.; and to that which he says that he is the keeper of the fees of another person we cannot have an answer, so that, if he should have such an answer, it would follow that he would rebut us in

¹ 13 Edw. 1. (Westm. 2), c. 35.

No. 16.

ge launcestre lenfaunt tient, par priorite del feffement, A.D. 1343.
del Counte de Garreyne, qe del pleintif, et moustra coment, par quei il, come baillif le Counte, seisisit lenfaunt,¹ et le pleintif voleit aver tollu, et il ne luy soeffri pas; jugement.—*Thorpe*. Il plede come feoder le Counte, en qi bouche tiel plee ne gist pas, desicome il nafferme nul dreit en sa persone, et nomement en ceo cas ou Statut voet *Si quis jus non habens*, &c.; et a ceo qil parle² qil est autri feoder nous ne poms aver respouns, issint qe, sil ust tiel respouns, ensuereit qil nous rebotereit en

"tenuit manerium de Parva
"Durneforde in servitio, &c., per
"servitium duorum feodorum mili-
"tum, de Johanne de Warennæ,
"Comite Surreie, videlicet per
"homagium [&c.] per
"antiquius feoffamentum quam
"idem Rogerus tenuit prædictum
"manerium de Littlecote, de quibus
"servitiis idem Comes fuit seisitus
"per manus prædicti Rogeri, &c.
"Et postea idem Rogerus domi-
"nium prædicti manerii de Parva
"Durneforde concessit
"cuidam Johanni de Erdescote,
"una cum prædicto manerio de
"Littlecote, tenendum sibi
"et heredibus suis in perpetuum,
"qui quidem Johannes de Erdes-
"cote de homagio suo
"et aliis servitiis de prædicto
"manerio de Parva Durneforde
"debitis se attornavit prædicto
"Comiti. Et postmodum idem
"Johannes de dominio prædicti
"manerii de Parva Durneforde,
"una cum prædicto manerio de
"Littlecote, præfatum Rogerum et
"Johannam uxorem ejus feoffavit,
"tenendis sibi et heredibus de
"corporibus suis exeuntibus de

"capitalibus dominis, &c., virtute
"ejus feoffamenti iidem Rogerus
"et Johanna de homagio
"et aliis servitiis se attornaverunt
"præfato Comiti. Et de ipsis
"Rogerus et Johanna exivit prædic-
"tus Laurencius ut filius et heres
"eorundem Rogeri et Johanne,
"&c., quæ quidem Johanna obiit
"vivente prædicto Rogerus. Et
"postmodum idem Rogerus
"obiit in homagio prædicti Comi-
"tis, per quod ipse Johannes de
"Soures, habens custodiam feodo-
"rum ipsius Comitis in Comita-
"tibus Wiltesiræ et Suthamtoniæ,
"statim post mortem prædicti
"Rogeri seisivit prædictum Lauren-
"cium nomine prædicti
"Comitis. Et prædictus Hilde-
"brandus ipsum Laurencium a
"possessione prædicti Comitis
"cepisse voluit; et ipse Johannes
"præfatum Hildebrandum hoc
"facere non permisit; unde petit
"judicium si idem Hildebrandus
"de hoc aliquam injuriam in
"persona ipsius Johannis assig-
"nare possit," &c.

¹ L., la garde.² L., and Harl., plede.

No. 16.

A.D. 1343. right of another person, to whom he is possibly a deforkeor ; judgment. But, on account of the opinion of the COURT, he would not abide judgment on this, but said :—Whereas he supposes that the infant's ancestor held of the Earl in service as of fee tail made to the ancestor, and his wife, and the heirs of their two bodies begotten, &c., we tell you that the ancestor was seised of the demesne out of which the rent is supposed to issue, &c., and leased the demesne to A. for term of A.'s life, yielding to him and to his heirs 20s. *per annum*, and afterwards granted the same rent, without making any mention of the reversion, to one B. for term of A.'s life, and took back an estate in the rent to him, and to his wife, and to the heirs of their two bodies begotten, and so he was tenant in tail of the rent for the life of the tenant for term of life, who is still living, and since by this demise and taking back he was not ousted from the tenancy in demesne, in right, because the reversion of the demesne, notwithstanding this grant, is continued, of which reversion one J., who is issue of the first wife of the infant's ancestor, is tenant, judgment whether you can in such circumstances enjoy such an answer. And he said further that he who is in wardship, &c., is issue of the second wife.—

No. 16.

autri dreit, a qi par cas il est deforceour; juge- A.D. 1343.
ment. *Sed propter opinionem Curie nolebat super*
hoc morari, mes dit la ou il suppose qe launcestre
lenfaunt tient del Count en service come de fee¹
taille fait al auncestre, et sa femme, et les heirs
de lour ij corps engendres,² &c., nous vous³ dioms
qe launcestre fut seisi del demene dount le rente
duist issir, &c., et lessa le demene a A. a terme
de sa vie, rendaut a luy et a ses heirs xxs. par an,
et puis graunta mesme⁴ la rente, sanz faire mencioun
de la reversion, a un B. a terme de sa vie, et
reprist estat a luy, et a sa femme, et a les heirs
de lour deux corps engendres, de la rente, et issint
de la rente fut il tenaunt en la taille pur la vie
le tenaunt a terme de vie, qest unqore en pleine
vie, et de puis qe par cele demise et reprise il ne
fut pas ouste del tenaunce en demene, en dreit,
pur ceo qe la reversion del demene, *non obstante*
cel graunt, est continue, de quele reversion un J.
qest issue de la primere femme launcestre lenfant
est tenant, jugement si par taunt puissez tiel
respouns enjoyer.⁵ Et dit outre qe cestuy qi
garde, &c., est issue de la seconde femme.⁶—

¹ fee is from L. alone.² engendres is from 25,184 alone.³ vous is omitted from L., and Harl.⁴ mesme is omitted from L.⁵ 22,552, aver.

⁶ According to the roll the replication, preceded by a protestation, was "quod illud quod prædictus Johannes de Seures vocat manerium de Parva Durneforde est unum mesuagium et una carucata terre, quæ quidem mesuagium et terram prædictus Rogerus dimisit quibusdam Johanni de Wynterburne et Thomæ filio ejus tenenda ad terminum

"vitis eorundem Johannis et Thomæ, reddendo inde eidem Rogero et heredibus suis centum solidos per annum, qui quidem Rogerus habuit quandam uxorem, Margaretam nomine, de qua procreavit quendam Johannem filium et heredem ejusdem Rogeri, et prædicta Margareta obiit, et postmodum idem Rogerus dedit manerium prædictum, cum pertinentiis, et concessit prædictum redditum centum solidorum prædicto Johanni de Erdescoote et heredibus suis, qui quidem Johannes manerium prædictum cum pertinentiis, simul cum

No. 16.

A.D. 1348. *Pulteney*. He holds in service, as we have said, in fee tail; ready, &c.—*Derworthy*. This averment contrary to the special matter which we have mentioned cannot be accepted.—*HILLARY*. You traverse the seignory entirely, according to your intendment.—*Derworthy*. A jury will understand that the reversion would vest by such a grant and taking back.—*HILLARY*. Will you accept the averment?—*Derworthy*. The infant's ancestor held the demesne in reversion, as we have said, and not in service in fee tail, as you have said; ready, &c.—*Pulteney*. He held in service, in fee tail, of the Earl of Warren; ready, &c.—*Thorpe*. You must say that the ancestor held jointly with his wife in fee tail, for whether he held solely in tail or in fee simple will not be to the purpose, because either would equally give wardship of one who should be his heir; but if he held in tail jointly with his wife then it would be the special heir who would inherit.—*Pulteney*. The infant's ancestor held in service, in fee tail, by a gift made to him and his wife, &c., of the Earl, as we have said; ready, &c.—*Derworthy*. He held the demesne

No. 16.

Pult. Il tient en service, come nous avoms dit, en A.D. 1343.
 fee taille; prest, &c.—*Derworth.* Cest averement
 countre nostre dit especial nest pas acceptable.—
HILL. Vous traversez la seigneurie, a vostre entent,
 enterment.¹—*Derworthi.* Pays entendra par tiel
 graunt et reprise qe reversioun vestireit.—*HILL.*
 Voillez laverement²?—*Derworthi.* Launcestre lenfant
 tient le demene en reversioun, come nous avoms
 dit, et noun pas en service en fee taille, come vous
 avez dit; prest, &c.—*Pult.* Il tient en service, en
 fee taille, del Counte de G.³; prest, &c.—*Thorpe.*
 Vous dirrez qe launcestre tient joint ove sa femme
 en fee taille, qar le quel il tient en taille ou en
 fee simple soul ne serra pas a purpos, qar owelment
 lun et lautre durreit garde de celui qe serreit son⁴
 heir; mes⁵ sil tient en taille joint ove sa femme,
 donques heir especial serreit enherite.—*Pult.* Launcestre
 lenfaunt tient en service, en fee⁶ taille, dun doun fait
 a luy et⁷ sa femme, &c., del Counte, come nous avoms
 dit; prest, &c.⁸—*Derworthi.* Il tient le demene

"prædicto redditu, dedit et con-
 "cessit præfato Rogero et cuidam
 "Johannæ secundæ uxori suæ
 "tenendum ipsis Rogero et
 "Johannæ et heredibus de corpori-
 "bus suis exeuntibus, de quibus
 "Rogero et Johanna secunda
 "uxore sua prædictus Laurencius
 "est exitus. Et sic dicit quod
 "reversio prædictorum mesuagii, et
 "terræ, ad præfatum Johannem
 "filium et heredem prædicti Rogeri
 "de prima uxore sua genitum
 "spectat, qui quidem Johannes est
 "tenens ejusdem Comitæ prædic-
 "torum mesuagii et terræ, ut in
 "reversione, &c. Et ex quo præ-
 "dictus Johannes de Scures ex-
 "presse cognovit quod ipse præfa-
 "tum Laurencium heredem præ-
 "dicti Rogeri ratione talliæ, &c.,

"qui quidem Rogerus manerium
 "de Littlecote prædictum de ipso
 "Hildebrando tenuit per servitia
 "prædicta in feodo talliato, contra
 "voluntatem ipsius Hildebrandi
 "rapuit et abduxit, petit judicium
 "et damna sibi adjudicari."

¹ Harl., and 22,552, outrement.

² The report ends here in 22,552.

³ The words de G. are from
 25,184 alone.

⁴ son is omitted from L.

⁵ 25,184, may.s.

⁶ fee is from 25,184 alone.

⁷ Harl., dun doun en taille fait a,
 instead of en fee taille dun doun
 fait a luy et.

⁸ The rejoinder, as accepted, was,
 according to the roll, "quod præ-
 "dictus Rogerus de Calston tenuit
 "prædictum manerium de Parva

Nos. 17, 18.

A.D. 1848. in reversion, as we have said, and not in service, in fee tail, as you have said; ready, &c.—And the other side said the contrary.—*Pulteney*. We pray aid for the bailiff of the Earl, in whose name, &c.—*Thorpe*. He has not pleaded anything on the ground of which he ought to have aid.—*HILLARY*. Let him have aid.

Process
against
witnesses.

(17.) § Note that, on the return of the Grand Distress against witnesses in an inquest which was to be taken, for default of the witnesses, in that one of the witnesses was wrongly named in the process, to wit, William instead of Walter, the Court would not take the inquest, but made new process against the witnesses, &c.

Avowry. (18.) § Avowry on the plaintiff for the reason that

Nos. 17, 18.

en reversioun, come nous avoms dit, [et non pas A.D. 1343.
 en service, en¹ fee taille, come vous avez dit]²;
 prest, &c.³—*Et alii e contra.*—*Pult.* Nous prioms
 eide pur le baillif le Counte, en qi noun, &c.—
Thorpe. Il nad rien plede pur quei il deit eide
 aver.—*HILL.* Eit⁴ leide.

(17.)⁵ § *Nota* qe a⁷ la Graunt Destresse retourne ^{Proces}
 vers⁶ tesmoignes en un enqueste qe fut a prendre, ^{vers tes-}
 par default des tesmoignes, pur ceo qun des tesmoignes ^{moignes.}
 fut malement nome en le proces, saver, William pur
 Wauter, Couer ne voleit pas prendre enqueste, mes
 fit⁹ novel proces vers les tesmoignes,¹⁰ &c.

(18.)¹¹ § *Avowere* sur le pleintif pur la resoun *Avowere.*

"Durnesforde in dominio de præ-
 dicto Comite per servitium
 "militare per concessionem præ-
 dicti Johannis de Erdescote
 "præfato Rogero et Johanne
 "uxori ejus et heredibus de cor-
 "poribus suis exeuntibus factam,
 "sicut ipse superius dicit. Et hoc
 "paratus est verificare, unde petit
 "judicium," &c.

¹ L., come de.

² The words between brackets
 are omitted from 25,184.

³ The surrejoinder and aid
 prayer, according to the roll, were
 "quod prædictus Rogerus de Cal-
 "stone tenuit prædicta mesuagium
 "et terram, quæ ipse Johannes
 "vocat manerium de Parva Durne-
 "forde, de prædicto Comite in
 "reversione, &c., in feodo simplici,
 "absque hoc quod prædicti Rogerus
 "et Johanna tenuerunt manerium
 "prædictum in dominio in feodo
 "talliato sicut prædictus Johannes
 "dicit. Et hoc paratus est verifi-
 "care per patriam, quam quidem
 "verificationem prædictus Jo-
 "hannes sine prædicto Comite

"expectare non potest." Therefore
 the Sheriff is to summon the
 Earl. The Earl did not appear,
 and a jury was summoned to try
 the above issue between the
 parties.

⁴ 25,184, Eit adounques.

⁵ From L., Harl., 22,552, and
 25,184.

⁶ The words vers tesmoignes are
 from 25,184 alone. In L., and
 Harl., the marginal note is *Nota*.

⁷ L., sour.

⁸ L., and Harl., sour.

⁹ All the MSS., except L., firent.

¹⁰ The words vers les tesmoignes
 are omitted from L.

¹¹ From L., Harl., and 25,184,
 where the report appears as No.
 40, Nos. 18 and 40 being trans-
 posed. It has been corrected by
 the record, *Placita de Banco*,
 Easter 17 Edw. III. R^o 362. It
 there appears that the action of
 Replevin was brought by John
 son of William de Burstowe
 against Alice late wife of Roger
 Saleman, and others, for taking
 and detaining two of the plaintiff's

No. 18.

A.D. 1343. he held of one A.¹ by homage, fealty, and the services of 2*s. per annum* (and the avowant laid the seisin by the plaintiff's hand) which A.¹ granted the services to B.¹ and his heirs, and by reason of that grant the plaintiff attorned, and B.¹ granted the same services to D.¹ and K.¹ his wife who now avows, and the plaintiff attorned, and for the rent of 2*s.* in arrear the defendant avowed.—*Grene.* We tell you that A.¹ whose estate the avowant claims, released to us all the other services, to hold by one bolt for all services (that is to say one caltrop² or bolt); judgment whether contrary to the deed of the person whose estate the woman claims you can avow for other services.—*Pole.* This deed

¹ For the real names see p. 325, note 11.

² See p. 327, note 7, "*unum tribulum*," one caltrop.

No. 18.

qil tynt dun A. par homage, fealte, et les services ^{A.D. 1343.}
 de ijs.¹ par an,² et lia seisine par sa meyn, quel
 A. graunta les services a B. et a ses heirs, par
 quel graunt le pleintif sattourna, quel B. graunta
 mesmes les services³ a D. et K. sa femme, qore avowe,
 et le pleintif sattourna, et pur la rente de ijs.⁴
 arrere il avowa.—*Grene.* Nous vous dioms qe A.,
 qi estat lavowant cleyme, relessa a nous touz les
 autres services, a tener par un bozoun⁵ pour touz
 services [pur un tribule un bolt]⁶; jugement si
 countre le fait celuy qi estat la femme cleyme
 puissez pur autres services avower.⁷—*Pole.* Ceo fait

oxen. The avowry was on the
 ground that "quidam Willel-
 " mus de Burstowe, pater prædicti
 " Johannis nunc querentis, cujus
 " heres ipse est, quondam tenuit
 " unum mesuagium, viginti et
 " quatuor acras terræ, quatuor
 " acras prati, et quatuor acras
 " bosci, cum pertinentiis, in Hor-
 " lee, de quodam Rogero de
 " Logges ut de manerio suo de
 " la Logge, unde prædictus locus
 " in quo, &c., est parcella, per
 " fidelitatem et servitium duode-
 " cim solidorum et sex denariorum
 " per annum et per
 " herietum, scilicet meliorem
 " bestiam post mortem cujus-
 " libet tenentis, &c., de quibus
 " servitiis idem Rogerus fuit
 " seisisit per manus prædicti
 " Willelmi de Burstowe tanquam
 " per manus veri tenentis sui,
 " qui quidem Rogerus postea
 " manerium prædictum
 " dedit et concessit cuidam Adæ
 " de Roustone tenendum sibi et
 " heredibus suis in perpetuum,
 " virtute quarum donationis et
 " concessionis prædictus Willel-
 " mus de Burstowe de prædicto

" redditu prædicto Adæ se attor-
 " navit. Et postea idem Adam
 " prædictum manerium
 " dedit Rogero Saleman quondam
 " viro prædictæ Aliciæ et eidem
 " Aliciæ tenendum eisdem Rogero
 " et Aliciæ et heredibus ipsius
 " Rogeri in perpetuum, per quod
 " prædictus Willelmus eisdem
 " Rogero et Aliciæ de prædicto
 " redditu se attornavit. Et etiam
 " prædictus Johannes modo que-
 " rens, post mortem prædicti
 " Willelmi de Burstowe patris
 " sui, prædictis Rogero et Aliciæ
 " de prædicto redditu se attor-
 " navit," and the beasts were taken
 for the fealty and rent in arrears.

¹ Harl., deux south, instead of
 ijs.

² The words par an are from L.
 alone.

³ 25, 184, tenements.

⁴ L., deux aunz; Harl., deux
 south, instead of ijs.

⁵ L., bosoun.

⁶ The words between brackets
 are omitted from Harl.

⁷ According to the roll, the
 plea was "quod prædictus Rogerus
 "de Logges in vita sua

No. 19.

A.D. 1343. was executed after the attornment made to us; ready,
&c.—And the other side said the contrary.

Ejectment from Wardship. (19.) § Gerard de Braybroke brought a writ of Ejectment from Wardship against Joan wife of Hugh de Bretvylle, and another, containing the words "*quare, cum custodia manerii de B. ad præfatum, &c., chivaler, cum pertinentiis, pertineat,*" &c.—Notton. Judgment of the writ, for it is not the form of a writ of Ejectment
And note that the answer was good without saying anything as to the

No. 19.

se fist puis lattournement fait a nous ; prest, &c.—A.D. 1348.
*Et alii e contra.*¹

(19.)² § Gerard Braybroke porta bref dengettement de Garde vers Johane la femme Hugh Bretvyllle, et un autre,³ *quare, cum custodia manerii de B. ad prefatum, &c., chivaler, cum pertinentiis, pertineat, &c.*—*Nottone.* Jugement du bref, qar ceo nest pas fourme du bref

Engette-
ment de
Garde.
Et nota le
respouns
bon sanz
parler a

"remisit et omnino quietum
 "clamavit de se et heredibus
 "suis duodecim solidatas et sex
 "denariatas annualis redditus,
 "quod est idem redditus pro
 "quo, &c., quem quidem redditum
 "recipere solebat de prædicto
 "Willelmo de Burstowe
 "habendum et tenendum de se
 "et heredibus suis prædicto Wil-
 "lelmo et heredibus suis
 "reddendo inde annuatim sibi et
 "heredibus suis unum tribulum
 "ad Festum Sancti Michaelis
 "pro omnibus servitiis et secu-
 "laribus demandis. Et profert
 "hic in Curia quoddam scriptum
 "sub nomine prædicti Rogeri
 "quod hoc testatur et
 "petit iudicium si prædicta
 "Alicia pro aliis servitiis quam
 "prædicto tribulo advocare possit."

¹ According to the roll there was a replication "quod ipsa
 "[Alicia] de advocatione sua
 "prædicta pro prædictis fidelitate
 "et redditu per scriptum illud
 "repelli non debet, quia dicit
 "quod scriptum illud factum fuit
 "post attornamentum quod præ-
 "dictus Willelmus de Burstowe
 "fecit prædicto Adæ, &c., Et
 "hoc paratus est verificare, et
 "petit iudicium," &c.

This was followed by a re-
 joinder "quod prædictum scrip-

"tum factum fuit ante attorna-
 "mentum quod prædictus Willel-
 "mus de Burstowe fecit prædicto
 "Adæ," &c.

Upon this rejoinder issue was
 joined, and was followed by the
 award of the *Venire*.

² From L., Harl., 22,552, and
 25,184, but corrected by the
 record, *Placita de Banco*, Easter
 17 Edw. III. R^o 273. It there
 appears that the action was
 brought by Gerard de Braybroke
 against Joan late wife of Hugh de
 Bretvyllle, knight, and John son
 of John del Hay of Wildene.
 The words of the writ cited are
 "quare cum custodia manerii de
 "Bereforde, quod fuit Hugonis de
 "Bretvyllle, chivaler, cum pertinen-
 "tiis, usque ad legitimam ætatem
 "Johannis filii et heredis præ-
 "dicti Hugonis ad ipsum Gerar-
 "dum pertineat, eo quod prædic-
 "tus Hugo manerium prædictum
 "de eo tenuit per servitium mili-
 "tare, &c., et idem Gerardus in
 "plena et pacifica seisinâ ejus-
 "dem custodiæ diu extitit, præ-
 "dicti Johanna et Johannes filius
 "Johannis, prædicto herede infra
 "ætatem existente, ipsum Gerar-
 "dum a custodia illa violenter
 "ejecerunt."

³ The words et un autre are
 omitted from 22,552, and 25,184.

No. 19.

A.D. 1343. to determine the land with certainty ; besides, the words ejectment, *cum pertinentiis* refer to the knight, and not to the &c.
 See above, manor, for it is placed in the writ out of the usual Michael- form. And afterwards he passed on, and alleged that mas Term the infant's ancestor² divested himself, and took back in the 6th an estate to himself and to Joan his wife, against year, Writ whom the writ is brought, and to the heirs of the of Ravish- husband ; thus she is tenant of the freehold ; judgment.¹ judgment whether this writ lies against her.—*Thorpe*. We tell you that B.³ father of H.,³ the infant's ancestor, purchased in tail, and died seised, and, after his death, the infant's ancestor entered, and held, and died seised, without this that he ever divested himself, as you suppose ; judgment.—*Stouford*. Ready, &c., that the ancestor did not continue [his seisin]. —*SHARDELOWE*. You cannot take issue on the continuance, but you must maintain that you held jointly with the infant's ancestor, as above, because that is the cause which gives you the advantage of this plea, and against that he must maintain his writ to the effect that the ancestor died being his sole tenant, as he supposes by his writ, because issue will be

¹ Y. B. Mich. 6 Edw. III., No. 55.

² For the name see p. 331, note 6.

³ For the names see p. 333, note

2.

No. 19.

dengettement dassumer² la terre en certain; ovesqe A.D. 1343.
 ceo, le *cum pertinentiis* refiert³ au chivaler, et. noun lengette-
 pas al maner, qar cest mys en le bref hors de⁴ ment, &c.
 fourme. Et puis passa, et alleggea qe launcestre *Vide hic*
 lenfaunt se demist, et reprist estat a⁵ luy et a *supra*
 Johane sa femme, vers qi le bref est porte, et les M. vj, Bref
 heirs le baroun; issint est ele tenaunte du fraunk de Ravise-
 tenement; jugement si ceo bref vers luy gise.⁶ ment.¹
Thorpe. Nous vous dioms qe B. pere H.,⁷ launcestre
 lenfaunt, purchacea⁸ en la taille, et morust seisi,
 apres qi mort launcestre lenfaunt entra, et tient, et
 morust seisi, sanz ceo qil se demist unqes, come
 vous supposes; jugement.—*Stouf*. Prest, &c., qe
 launcestre ne continua pas.—*SCHARD*. Vous ne poiez
 prendre issue sur la continuaunce, mes covient qe
 vous meyntenez qe vous tenistes joint⁹ ove launcestre
 lenfaunt, *ut supra*, qar cest la cause qe vous doune
 lavantage de ceo plee, et coudre cella il¹⁰ covient
 qil meinteigne son¹¹ bref qe launcestre morust soul
 soun¹² tenaunt, come il suppose par son bref, qar

¹ The words of the marginal note subsequent to Garde are from 25,184 alone.

² 25,184, dassioner.

³ 22,552, affiert.

⁴ 22,552, saunz, instead of hors de.

⁵ 22,552, par fyne a.

⁶ L., igise. The plea (preceded by a protestation) was, according to the roll, "quod quidam Willelmus de Bretvyll fuit seisisus de prædicto manerio in dominico suo ut de feodo, qui quidem Willelmus de eodem manerio feoffavit quosdam Thomam de Stadle, et Johannem del Hay, habendo, et tenendo, sibi et heredibus suis in perpetuum; qui quidem Thomas et Johannes, habita inde seisina, refoffaver-

unt prædictum Willelmum de eodem manerio tenendo ad totam vitam ipsius Willelmi, et post decessum ipsius Willelmi manerium illud remaneret Hugoni de Bretville et Johanne uxori ejus et heredibus de corporibus suis procreatis, et sic dicit quod ipsa Johanna est tenens ejusdem manerii ratione doni prædicti, et petit judicium si ad hoc breve debeat respondere," &c.

⁷ H. is omitted from 22,552.

⁸ L., procheyn.

⁹ joint is omitted from L.

¹⁰ L., qil, instead of cella qil.

¹¹ L., and Harl., qe vous meintenez vostre, instead of qil meinteigne son.

¹² soun is omitted from 22,552.

No. 19.

A.D. 1343. taken rather on the writ than on a collateral matter which tends to the same effect.—Wherefore the issue was entered in general terms, and their pleadings on one side and the other were also entered.

No. 19.

homme prendra issue plus toust sur le bref qe sur A.D. 1343.
chose¹ de coste qe va a mesme leffecte.—Par quei
lissue generalment est entre, et lour dit entre dune
part et dautre.²

¹ L., cest chose.

² See further Trin. 17 Edw. III.
No. 3. The pleadings subsequent
to the plea are entered upon the
roll thus:—"Et Gerardus dicit
"quod prædicta Johanna, per
"hoc, breve suum evacuare non
"debet, quia dicit quod in Itinere
"Bedefordias, scilicet die Sab-
"bati proximo post Quindenam
"Sancti Johannis Baptistæ, anno
"domini Regis nunc quarto,
"coram Roberto de Ardern et
"Sociis suis tunc Justiciariis
"domini Regis ibidem itineranti-
"bus, levavit quidam finis inter
"prædictum Willelmum de Brette-
"ville et Alianoram uxorem ejus,
"querentes, et quendam Ricardum
"le Breton de Stondone, deforci-
"antem, de manerio de Bereforde,
"cum pertinentiis, unde placitum
"conventionis summonitum fuit
"inter eos in eadem Curia,
"scilicet quod prædictus Willel-
"mus recognovit prædictum man-
"erium, cum pertinentiis, esse
"jus ipsius Ricardi ut illud
"quod idem Ricardus habet de
"dono ipsius Willelmi, &c., et
"pro hac recognitione idem
"Ricardus concessit prædictis
"Willelmo et Alianoræ prædic-
"tum manerium, cum pertinentiis,
"et illud eis reddidit in eadem
"Curia, habendum et tenendum
"eisdem Willelmo et Alianoræ et
"heredibus de corporibus ipsorum
"Willelmi et Alianoræ exeunti-
"bus de capitalibus dominis,
"&c., et si &c., tunc post

"decessum ipsorum Willelmi et
"Alianoræ prædictum manerium
"remaneret rectis heredibus ipsis
"Willelmi tenendum de capitali-
"bus dominis, &c., et sic dicit
"quod idem Willelmus de tali
"statu de eodem manerio obiit
"seisitus, post cujus mortem
"quidam Hugo de Bretteville,
"filius et heres prædicti Willelmi,
"intravit in manerium illud, et
"obiit inde solus tenens, absque
"hoc quod prædicti Thomas et
"Johannes aliquid habuerunt in
"eodem manerio de dono prædicti
"Willelmi, et hoc paratus est
"verificare," &c.

"Et Johanna, non cognoscendo
"aliquem finem de prædicto
"manerio levare, dicit quod
"prædictus Willelmus dedit præ-
"dictum manerium prædictis
"Thomas et Johanni, et iidem
"Thomas et Johannes refoff-
"averunt prædictum Willelmum
"de manerio illo tenendo ad
"totam vitam ipsius Willelmi,
"ut superius allegatum est, et
"quod post mortem prædicti
"Willelmi prædictum manerium
"remansit præfatis Hugoni et
"Johannæ in forma prædicta, et
"sic dicit quod prædictus Hugo
"non obiit solus tenens de man-
"erio illo, sed conjunctim tenens
"cum præfata Johanna, &c., per
"feoffamentum prædictum, &c.,
"et hoc parata est verificare."
"Et Gerardus dicit quod præ-
"dictus Hugo obiit solus tenens
"manerii prædicti, &c., sicut

No. 20.

A.D. 1343. (20.) § Johan le Grelle brought a writ of Annuity, for one robe with fur *per annum*, against B.¹—*Moubray*.
 Annuity on a specialty conditional, &c., to wit for the service of the said plaintiff, and for his advice given and to be given to the defendant in time of peace and of war, &c.
 You see plainly how the specialty by which, &c., is conditional, and is for his service and advice given and to be given in time of peace and of war; and we tell you that the King caused his people to be warned to go with him into Brittany² in such a year; wherefore B.¹ by his bailiff (A.¹ by name) on a certain day, in a certain year, and at a certain place, required John the plaintiff to go with him at his cost, and John refused; thus the annuity is extinguished; judgment.—*Pole*. You see plainly that it is not

¹ For the names in full, see p. 335, note 1.

² Brabant according to the record. See p. 335, note 7.

Quære whether the plaintiff is bound, by the manner and form of this retainer, to go out of the realm.

No. 20.

(20.)¹ § Johan Grelley³ porta bref dannuite dune robe et dune furrure⁴ par an, vers B.⁵—*Moubray*. Vous veiez bien coment lespecialte par quel, &c., est condicional, et pur soun service et conseil fait et a faire en temps de pees et de guerre; et vous dioms qe le Roy fit garnir ses⁶ gentz daler ove luy en Bretagne tiel an; par quei B. maunda par son baillif, A. par noun, certain jour, an, et lieu, a Johan qest pleintif qil alast ove luy a ses custages, et il le refusa; issint lannuite esteinte; jugement.⁷—*Pole*. Vous veiez bien coment par le fait nest pas

A.D. 1343.
Annuite sur une especialte condicional, &c., sayer pur le servys del dit pleintif, et pur son councele fait et a faire al defendant en temps de pees et de guerre, &c.

"superius allegatum est, absque hoc quod prædicti Thomas et Johannes aliquid habuerunt in manerio illo de dono prædicti Willelmi. Et hoc petit quod in quiratur per patriam. Et prædicta Johanna similiter.

"Et Johannes dicit quod ipse est ballivus prædictæ Johannæ, et quod ipse prædictis die et anno quibus prædictus Gerardus superius queritur venit cum prædicta Johanna in auxilium ejusdem Johannæ, assistendo eidem, absque aliqua injuria præfato Gerardo inde faciendo. Et de hoc ponit de super patriam. Et prædictus Gerardus similiter."

Gerard afterwards failed to appear and judgment was given for the defendants.

¹ From L., Harl., 22,552, and 25,184, but corrected by the record, *Placita de Banco*, Easter 17 Edw. III. R^o 351, d. It there appears that the action was brought by John le Grelle against William le Botiller of Weryngtone (Warrington, Lancs.) in respect of arrears of an annuity of one robe with fur (*cum furrura*) granted to him by

deed, as stated in the declaration, "pro fideli servitio suo, consilio et auxilio, tam in gwerra quam in pace factis, et ipsi Willelmo et heredibus suis in futurum faciendis."

² The marginal note, except the word Annuite, is from 25,184 alone. ³ L., Creil; Harl., Grylley; 25,184, Grilley.

⁴ 22,552, forure; 25,184, fourre.

⁵ The words vers B. are omitted from L.

⁶ L., cez.

⁷ The plea is in the roll to the same effect as in the record, but concludes as follows:—"Et dicit quod idem Willelmus per Johannem de Radeclive, senescallum ipsius Willelmi, apud Weryngtone requisivit ipsum Johannem quod idem Johannes iret cum ipso Willelmo in societate domini Regis versus partes Brabancie, et idem Johannes cum ipso Willelmo ad partes prædictas iter suum arripere recusavit, unde petit judicium si prædictus Johannes actionem ad petendum annum redditum habere debeat."

No. 21.

A.D. 1343. supposed by the deed that he ought to travel anywhere out of this realm; and of common right he has not to travel anywhere out of this realm; judgment.—*Moubray*. Then it is so, and we understand that war, by common intendment, cannot be understood to be in this realm, but in another realm; and inasmuch as you have admitted as above, judgment.—*Pole*. And we demand judgment whether by such a deed we shall be charged to travel out of this realm.—And so to judgment.—*Quere*.

Debt
against
executors,
where
there was
a variance
between
the writ
and the
will, there
being
more in

(21.) § The executors of Roger de Waltham, Prebendary, &c., brought a writ of Debt against the executors of the will of Peter de Saltmerske, knight. And exception was taken, in abatement of the writ, to a variance between the writ and the will, in the testator's surname, because in the one it was *Præbendarius* and in the other *Canonicus*, &c., and also

No. 21.

suppose qil deit travailler nul part¹ hors de ceste terre; [et de comune dreit il nest pas a travailler nul part hors de ceste terre;]² jugement.³—*Moubray*. Donques est il issint, et nous entendoms qe guerre, de comune entent, ne poet estre entendu en ceste terre, mes en autre terre; et desicome vous avez conu *ut supra*, jugement.—*Pole*. Et nous jugement si par tiel fait⁴ serroms charge de travailler hors de ceste terre.—*Et sic ad iudicium*.⁵—*Quære*.⁶

(21.)⁷ § Les executours Roger Waltham,⁸ Provandrer, Dette vers &c.,⁹ porterent bref de Dette vers les executours Piers¹⁰ Saltmerske,¹¹ chivaler. Et variaunce fut chalange, al abatement du bref, entre bref et testament, en le surnoun le testatour, [qar lun fuit *Præbendarius*, et lautre *Canonicus*, &c.,]¹² et auxi

execu-
tours, ou
entre le
bref et le
testament
y avoit
variance,
plus en le

¹ The words nul part are from 22,552 alone.

² The words between brackets are omitted from 22,552.

³ According to the roll the replication was "quod ex quo prædictus Willelmus non dedicit prædictum scriptum esse factum suum, et per aliqua verba quæ continentur in prædicto scripto non intendit quod ipse cum præfato Willelmo extra regnum Angliæ laborare tenetur, petit iudicium et damna," &c.

⁴ L., especialte.

⁵ L., *adjournantur*, instead of *sic ad iudicium*.

⁶ *Quære* is from Harl. alone. The roll shows nothing after the replication, except adjournments.

⁷ From L., Harl., 22,552, and 25,184, but corrected by the record *Placita de Banco*, Easter 17 Edw. III. R^o 153. It there appears that the action was brought by Richard de Colecestre and William Bregge,

of Waltham, chaplain, executors, (with others, who were severed) of the will of Roger de Waltham, late Canon of the church of St. Paul, London, and Prebendary of the prebend of Saltmerske in the church of Howden, against James de Elande, parson of the church of Tankerslay and Edward de Saltmerske, executors of the will of Peter de Saltmerske, knight. Peter had, according to the declaration, become bound to Roger by deed in the sum of £40, for a portion of the fruits [fructuum], sheaves, [garbarum], lambs, wool, flax, and hemp, of the vills of Saltmerske, Cotenesse and Metham.

⁸ L., Woldham.

⁹ The words Provandrer, &c., are omitted from L.

¹⁰ 25,184, B. de.

¹¹ L., and 22,552, Selmaris.

¹² The words between brackets are omitted from 22,552.

No. 21.

A.D. 1343. because the writ was not in accordance either with the writ; but the writ did not abate for the surplusage, which was not repugnant. the specialty of the debt or with the will.—But, because there was more in the writ than in the specialty, it was said that the writ was not abatable for variance.—And nevertheless it was said that a writ which is purchased for executors shall be in accordance with the will rather than with the specialty made to the testator in case there be any diversity between the two.—Afterwards they declared that they had nothing in hand, of the goods of the testator, as executors, on the day of the purchase of the writ, nor afterwards, because that which they had was seized into the King's hand for his debt long before, and *Richemunde* showed

No. 21.

de ceo qil ne saccorda pas ne al especialte de la dette ne al testament.—Mes, pur ceo qil y avoit plus en le bref qen lespecialte, fut dit qe ceo ne fut pas abatable² pur variaunce.—*Et tamen* fut dit qe bref qest purchace³ pur executours serra plus toust acordaunt al testament qe al especialte fait al testatour en cas qil y avoit diversite entre les deux. —Puis⁴ ils moustrerent qils navoient riens entre meyns, des biens le testatour, come executours,⁵ jour de bref purchace, ne puis, pur ceo qe ceo⁶ qils avoient⁷ fut seisi en la mayn le Roy pur sa dette⁸ longe temps adevant, et *Richem.* moustra coment.⁹—

¹ The marginal note, except the word Dette, is from 25,184 alone. In Harl., the note is Dette pur executours.

² 25,184, abatu.

³ Harl., and 22,552, a purchacer.

⁴ Harl., parties.

⁵ The words come executours are from L. alone.

⁶ The words qe ceo are omitted from L., and 25,184.

⁷ 25,184, qil avoit, instead of qils avoient.

⁸ The words pur sa dette are from 22,552 alone.

⁹ The plea, according to the roll, was "quod post mortem prædicti Petri . . . dominus Rex nunc mandavit brevia sua Vicecomitibus Huntendonie, Cantabrigie, et Eboraci returnabilia in Scaccario Regis, anno regni Regis nunc undecimo, de capiendo in manum domini Regis omnia bona et catalla quæ fuerunt prædicti Petri, die quo obiit, in quibuscunque manibus devenerunt, eo quod prædictus Petrus extitit Vicecomes Eboraci et nondum reddidit computum suum domino Regi de Wapen-

"tachiis de Hang, Halikeld, et Gillyng post mortem Johannis de Britannia Comititis Rychemundie, et etiam de exitibus molendini subtus Castrum Eboraci, ad quem diem Vicecomites Huntendonie et Cantabrigie recordaverunt quod seisiserant in manum domini Regis bona et catalla quæ fuerunt prædicti Petri, die quo obiit, ad valentiam sexaginta et sexdecim solidorum et octo denariorum, inventa in manibus prædictorum executorum, et quod non fuerunt plura bona in balliva sua. Et etiam Vicecomes Eboraci ad eundem diem retornavit quod mandavit Petro de Bradfelde Ballivo Libertatis de Houedene, eo quod omnia bona et catalla quæ fuerunt prædicti Petri fuerunt infra libertatem illam et non alibi in eodem Comitatu, qui quidem Ballivus seisivit in manum Regis diversa bona et catalla quæ fuerunt prædicti Petri, ad valentiam tresdecim librarum et octo solidorum, et quod non fuerunt plura bona ipsius Petri in balliva sua: de

A.D. 1343.
bref; mes
pur le
surplus,
qe ne fust
mye repug-
naunte,
le bref
nabati
mye.¹

No. 21.

A.D. 1343. *How.*—*Pole.* That is not an answer, because it has two meanings—either because you had fully administered—or because you never administered as executors.—*SHARDELOWE.* Answer, for the answer is sufficiently certain.—*Seton.* They had assets of the goods of the deceased on the day of the purchase of the writ.—*Notton.* They had nothing, as executors, of the goods of the deceased on the day of the purchase of the writ, nor at any time afterwards.—*SHARDELOWE.* You have answered as executors, and therefore you give no answer unless you traverse to the effect that you have had nothing since the purchase of the writ.—*Notton.* We might have had some of his goods in hand since, and in some other way than as executors, with which we shall not be charged.—*SHARDELOWE.* Answer.—*Notton.* We had nothing on the day of the purchase of the writ, nor afterwards, of the goods of the deceased; but we tell you, as before, that the King seized, as above, and was answered as to the goods for his debt, and we have them since by our purchase; judgment whether thereby we shall be charged.—*Blaykeston.* We tell you that the testator was bound to the King only in the sum of £13, and that was the reason why the King's officers seized, and in respect of that sum you made satisfaction, and you had the goods of the deceased delivered to you, so that beyond that

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[*Pole*. Ceo nest pas respouns, pur ceo qil ad deux A.D. 1248. ententes—ou pur ceo qe vous aviez pleynement administrastre—ou pur ceo qe unges administrastes come executours.—*SCHARD*. Respondez, qar le respouns est assez en certain].¹—*Setone*. Il avoit assetz des biens le mort² jour du bref purchace.—*Nottone*. Ils navoient rien,³ come executours, des biens le mort jour du bref purchace, ne unges puis.—*SCHARD*. Vous avez respondu⁴ come executours,⁵ par quei vous ne responez pas si vous ne traversez qe vous navez rien puis le bref purchace.—*Nottone*. Nous puissoms aver eu de ses biens puis entre mayns, et par autre voie qe⁶ come executours, de quei nous ne serroms pas charge.—*SCHARD*. Respondez.—*Nottone*. Nous navoms riens jour du bref purchace, ne puis, des biens le mort; mes vous dioms, come avant, qe le Roy seist, *ut supra*, et fut respondu des biens pur sa dette, et nous lavoms puis de nostre achat⁷; jugement si par taunt serroms charge.—*Blaik*. Nous vous dioms qe le testatour fut⁸ tenuz au Roy forsque en xiiij li., et ceo fut la cause pur quei ses ministres seiserent,⁹ de quei vous feistes¹⁰ gree, et avez la livre¹¹ des biens le mort, issint qe outre cele

" quibus summis iidem Vice-
" comites et Ballivus se oneraver-
" unt domino Regi in compotis
" suis et in returnis suis. Et
" postea prædicti Vicecomites præ-
" dicta bona et catalla prædictis
" executoribus prædicti Petri ven-
" diderunt, et sic dicunt quod
" die impetrationis brevis, &c.,
" ipsi non habuerunt aliqua bona
" seu catalla quæ fuerunt prædicti
" Petri nisi illa quæ sic habuer-
" unt ex venditione prædictorum
" Vicecomitum."

¹ The words between brackets
are omitted from 22,552 in this

place, but are inserted below be-
tween purchace and *Nottone*.

² L., entre mayns, instead of des
biens le mort.

³ rien is omitted from L.

⁴ L., responez, instead of avez
respondu.

⁵ The words come executours are
omitted from 25,184.

⁶ L., aver deliverez qe.

⁷ 22,552, acate.

⁸ L., ne fut.

⁹ Harl., seiserent; 22,552, seisier-
ent.

¹⁰ L., faites; Harl., fetes.

¹¹ L., dilivre

No. 22.

A.D. 1343. sum in respect of which you made satisfaction £4 remained to you. Judgment, since in this way you have assets, whether you shall not be charged.—To this he was, by judgment, put to answer.—And he said that, beyond the sum in respect of which they had made satisfaction, they had nothing; ready, &c.—And the other side said the contrary.

Continuation of Avowry. See above Michaelmas Term in the 16th year.¹ (22.) § Avowry was made, by reason of partition, as appears above, for an assignee of an assignee of

¹ See Y.B. Mich. 15 Edw. III. No. 49.

No. 22.

somme de quele vous feistes¹ gree² iiij³ livres vous A.D. 1343. demurerent.⁴ Jugement, de puis qe par ceste voie avez assez, &c., si vous ne serrez charge.⁵—A quei il fut mys par agarde de respondre.—Et dit qe, outre ceo qils avoient fait gree, ils navoient rien; prest, &c.—*Et alii e contra*.⁶

(22.)⁷ § Avowere fut fait, par cause de purpartie, *Residuum davowere. Vide supra Michaelis xvj.*⁸
*ut patet*⁹ *supra*, pur assigne dassigne de les

¹ L., fites.

² gree is omitted from 25,184.

³ L., and Harl., cccc; 22,552, iiij^o. According to the record the amount must have been £186 12s.

⁴ 25,184, devierent.

⁵ The replication, according to the roll, was "quod prædicti Jacobus et Edwardus et alii co-executores sui habuerunt in manibus, tempore hujusmodi seisinæ, bonorum et catallorum quæ fuerunt prædicti Petri ad valentiam ducentarum librarum apud Thorgramby et Saltmerske in prædicto Comitatu Eboraci, quæ quidem bona et catalla, per collusionem et fraudem inter ipsos executores testamenti prædicti Petri Vicecomitis Eboraci et Ballivum Libertatis prædictæ habitas ad excludendum ipsum Regem et prædictum Rogerum . . . et alios quoscunque de hujusmodi debitis ab ipsis executoribus testamenti prædicti Petri recuperandis, ad prædictas tresdecim libras et octo solidos tantum appreciata et ipsis sic liberata fuerunt. Et sic dicunt quod prædicti executores testamenti prædicti Petri satisfecerunt prædicto Vicecomiti Eboraci de prædictis tresdecim libris et octo solidis pro bonis et catallis prædictis, de quibus quidem bonis et

"catallis ultra prædictam summam tresdecim librarum et octo solidorum, unde domino Regi per prædictum Vicecomitem Eboraci et prædictum Ballivum responsum fuit, prædicti Jacobus et Edwardus et alii co-executores ipsius Petri satis habuerunt in manibus die impetrationis brevis sui . . . unde prædictis executoribus testamenti prædicti Rogeri de prædictis quadraginta libris satisfecisse potuerunt."

⁶ The rejoinder upon which issue was joined, was, according to the roll, "quod die impetrationis brevis, &c., non habuerunt aliqua bona in manibus quæ fuerunt prædicti Petri administranda ultra prædictam summam tresdecim librarum et octo solidorum de bonis et catallis prædictis," &c.

Nothing more appears upon the roll except the award of the *Venire*.

In 25,184 there are added the words *Sic nota lissu de ceo pleæ*.

⁷ From L., Harl., 22,552, and 25,184.

⁸ The reference is from 25,184 alone. *xvj* is probably a mistake for *xx*. See the notes to the other report of the case which follows. In Harl., the marginal note simply Avowere.

⁹ *patet* is omitted from L.

No. 22.

A.D. 1343. the three parceners to whom the charge was granted with a clause of distress for them and their assigns; and it was recited in the specialty that one of the sisters had two daughters¹ to whom her purparty descended, and then the deed purported that one alone was party to the partition, and that the charge was granted to her and to the issue of the other two sisters.—*Pole*. Judgment of the avowry, for the specialty on which the avowry is founded proves that the inheritance descended to one J.,² whose estate in the rent he does not show himself to have by his avowry, and he does not show that the entirety of the rent, notwithstanding the descent which has reached him, could be in the other parceners, and so this avowry is not warranted by the specialty.—*Derworthy*. The specialty does not suppose that she of whom you speak was party to the partition, nor yet to the grant of the rent, but the reverse; and therefore the avowry is in accordance with the specialty.—*Grene*. When partition is made between one sister and one of the daughters of another sister, and, because the purparty of that one daughter is worth more than appertains to the portion of the two who are issue of the other daughter, that daughter charges herself with rent to her who is party, then I say that by law the other issue can hold to that partition, and shall have the charge granted by reason of the partition just as much as if she had been a party.—*SHARDELOWE*. If a person other than the person who is party according to that which he has avowed has

¹ Named Alice and Joan according to the other report, p. 348.

² Alice, according to the other report.

No. 22.

iiij¹ parceners a queux la charge fuist grante² ove A.D. 1348. clause de destresse pur eux et lour assignes; et en lespecialte fut reherce coment une des³ soers avoit deux filles⁴ as queux sa purpartie descendist, et puis voleit le fait qe lun fut soulement partie a la purpartie, et a luy et as⁵ issues des autres deux soers la charge fut graunte.—*Pole*. Jugement del avowere, qar lespecialte sur quel lavowere est foundu prove⁶ qe leritage descendist a un J., qi estat il se fait⁷ pas⁸ aver par savowere en le rente, ne moustre pas qe lenterte⁹ del rente, *non obstante* la descent descendu en luy purreit estre en les autres¹⁰ parceners, et issint cest avowere nient garrantie del especialte.—*Derworthi*. Lespecialte suppose pas qe celuy dount vous parles fut¹¹ partie a la purpartie,¹² ne al graunt de la rente nient¹³ plus, mes le reverse; par quei cest acordaunt al especialte.—*Grenc*. Quant purpartie est fait entre lune soer et une des filles lautre soer, et par taunt qe la purpartie dune fille vant plus qe ceo¹⁴ qaffiert¹⁵ a la porcion¹⁶ de les¹⁷ deux queux sount issues a lautre fille, la fille se charge en rente a cele qest partie, jeo die qe de ley lautre issue poet tener a cele purpartie, et avera la charge graunte par resoun de la purpartie si avant come sele ust este partie.—*Schard*. Si autre eit la rente qe celuy¹⁸ qest partie¹⁹ solonc ceo

¹ iij is omitted from Harl.² L., fut; Harl., and 25,184, fit, instead of fuist grante.³ 22,552, de ses.⁴ MSS., fitz.⁵ 25,184, ses.⁶ L., et prove.⁷ L., fist.⁸ pas is omitted from 22,552.⁹ L., la terce partie.¹⁰ 25,184, ij.¹¹ 22,552, ne fuist pas.¹² 22,552, al avowere, instead of a la purpartie.¹³ nient is omitted from 22,552, and 25,184.¹⁴ The words qe ceo are omitted from L.¹⁵ 25,184, qafferreit.¹⁶ Harl., les porcions, instead of la porcion.¹⁷ The words de les are omitted from L.¹⁸ The words qe celuy are omitted from L.¹⁹ partie is omitted from 22,552.

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A.D. 1343. the rent, you can say that by way of answer.—*Pole*. The person whose assignee the avowant makes himself had nothing by gift from the parceners; ready, &c. —And the other side said the contrary.—*Quære* whether an assignee of an assignee cannot distrain in this case.

Replevin. § Thomas de Esture complained, against John de Sandhurst, of his beasts tortiously taken, and John avowed the taking for a rent charge, as appears in Michaelmas Term in the 15th¹ year, and afterwards the Return was adjudged to John, as appears in Easter Term in the 15th² year. And now Thomas sued the Second Deliverance, and counted against John as to his cattle tortiously taken.—*IV. Thorpe* avowed the taking as good on the ground that one William was seised of the manor of C.,³ whereof the place, &c., and of several other lands, and died seised, and, after his death, the inheritance descended to Florence,⁴ Rose,⁴ Cecilia,⁴ and Sibyl⁴; and Florence⁴ had issue one Joan,⁴ and died, and after her death partition was made, so that the manor of C.³ was allotted to Rose's purparty, and because that manor was of greater value than the purparty of any of the others, Rose granted an annual rent of 20s. to the same Joan,⁴ Cecilia,⁴ and Sibyl,⁴ to be taken out of the same manor, to hold to them, and their heirs and assigns, and bound the same manor to their distress. And he said that afterwards the same Joan,⁴ Cecilia,⁴ and Sibyl⁴ granted the same rent to one William Kirke,⁵ which William

¹ M. 15 E. III. No. 49.

² This should be the 16th, the reference being apparently to E. 16, No. 7.

³ Stourmouth, according to the record of M. 15.

⁴ Here, as in the report of M. 15, some of the names and facts differ from those given in the record.

⁵ Kirkeby, according to the record of M. 15.

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qil¹ ad avowe, vous le² poiez dire par voie de re- A.D. 1343. spouns.—*Pole*. Celuy qi assigne lavowaunt se fait³ navoit rien del doun les parceners; prest, &c.—*Et alii e contra*.—*Quere* si assigne dassigne ne⁴ poet destreindre en ceo cas.

§ Thomas⁵ de Esture⁶ se plaint de ses avers a *Replegiari*. tort pris vers Johan de Sandhurst, qe avowa la prise pur un rente charge *ut patet Michaelis* xv, et apres retourne fuit agarde a J. *ut patet Pasche* xv. Et ore Thomas suit la Seconde Deliverance, et counta devers J. de ses avers a tort pris.—*W. Thorpe* avowa la prise bone par la resoun qun William fuit seisi del maner de C. dount le lieu, &c., et de plusours autres terres, et morust seisi, apres qi mort le heritage descendi a Florence,⁷ Rose, Cecile, et Sibyle⁸; et Florence avoit issue une Johane, et morust, apres qi mort purpartie se fist, issint qe le maner de C. fuit allote a la purpartie Rose, et pur ceo qe cel maner valust plus qe ne fist la purpartie nul des autres, Rose granta un annuel rente de *xxs.* a mesmes ceux Johane, Cecile, et Sibyle, a prendre de mesme le maner, a eux et a lour heirs et a lour assignes, et obligea mesme le maner a lour destresse. Et dit qe puis mesmes ceux Johane, Cecile, et Sibyle granterent mesme le rente a un William Kirke,⁹ le quel William graunta outre

¹ The report ends here in 22,552, a space being left between this case and the next.

² 25,184, ne.

³ Harl., fist.

⁴ ne is omitted from L.

⁵ This report appears by itself as No. 43 in the old editions. There can hardly be a doubt that it is a second report of No. 22. They should both be compared with M. 15 E. III. No. 49 and the corres-

ponding record there cited. No MS. of this report has been found, and there is no reference to it in Fitzherbert's Abridgment.

⁶ This name appears to be Escure in the record of Mich. 15 Ed. III., but it may possibly be identified with Eastry in Kent.

⁷ See the record cited in notes to M. 15 E. III., No. 49.

⁸ Rastell, Sibelle.

⁹ Rastell, Kyrke.

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A.D. 1343. granted over the same rent to his brother, whose heir he is, and for certain rent in arrear since the death of his brother he avowed, &c., whereupon Thomas, as tenant of the same manor for term of life, prayed aid of him to whom the reversion belongs. And the aid was granted, and afterwards, by reason of the non-appearance of the prayee in aid, he was put to answer alone.—*Blaykeston* therefore demanded oyer of the deed by which the parceners granted the rent to William. And it was read, and it purported throughout that the rent commenced in such manner as was supposed by the avowry, except that by the deed it was supposed that Florence had issue two daughters, to wit, Alice and Joan, of which Alice no mention was made in the avowry, and that they, together with Cecilia and Sibyl and the other parceners, granted the rent to William de Kirke.—*Moubray*. Judgment of this avowry not warranted by the specialty, for it is supposed by the avowry that the rent was granted by Joan one daughter of Florence, and by Cecilia and Sibyl, and it is proved by the deed that the rent was granted to him by the two daughters of Florence, and by Cecilia and Sibyl, and so the avowry is not in accordance with the specialty; wherefore judgment, and we pray our damages.—*Blaykeston*. To that we say that this Alice, daughter of Florence, had nothing in the land in respect of which the partition was made between the parceners, nor had she anything in the rent, for Rose granted the rent to Cecilia, Sibyl, and Joan only, and not to Alice, and so nothing passed to W. Kirke by grant from her; and therefore no law puts us to make mention of her in the avowry.—*Grene*. Since your avowry cannot be maintained without a specialty it is therefore necessary that you avow in accordance with it; and as to that which you say that Alice had nothing in the land of which partition was made, I say, Sir, that, by reason of the occupation which her sister had, in conjunction

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mesme le rente a son frere, qi heir il est, et pur A.D. 1343.
 certain rente arere puis la mort son frere il avowa,
 &c., ou T. come tenaunt a terme de vie de mesme
 le maner pria eide de cestuy a qi la reversion
 appent. Et leide fuit graunte, et puis, par non
 venue de cesty qe fuit prie en eide, il fuit mis a
 respoudre soul. Par quei *Blaik.* demanda oier de
 fait par quel les parceners granterent le rente a
 William, quel fuit lieu,¹ et voloit en tut qe le rente
 comencea en tiele manere come fuit suppose par
 lavowere, forpris qe par le fait fuit suppose qe
 Florence avoit issue ij filles, saver Alice et Johane,
 de quele Alice nule mencion fuit fait en lavowere,
 et les queux graunterent le rente a William de Kirke
 ensemble ove Cecile et Sibyle et les autres parceners.
 —*Moubray.*² Jugement de cest avowere nient garranti
 de lespecialte, qar par lavowere il suppose qe le
 rente fuit graunte par Johane lune fille Florence,
 et par Cecile et Sibyle, par le fait est prove qe le
 rente luy fuit graunte par les deux filles Florence,
 et par Cecile et Sibyle, issint lavowere nient acord-
 ante a lespecialte; par quei jugement, et prioms
 nos damages.—*Blayk.* A ceo dioms nous qe cele
 Alice, la fille Florence, navoit rienz en la terre par
 quei la purpartie fuit faite entre les parceners, ne
 ele navoit riens en le rente, qar Rose graunta le
 rente a Cecile, Sibyle, et Johane soulement, et nient
 a luy, issint riens passa a W. Kirke par son graunt;
 et par tant nule [ley] nous met de faire mencion
 de luy en lavowere.—*Grenc.* Quant vostre avowere
 ne poet pas estre meyntenu sans especialte il covient
 donques qe vous avowes acordant a ceo; et quant a
 ceo qe vous parles qe Alice navoit riens en la terre
 de quei purpartie fuit faite, Sire, jeo dis qe, par
 la occupacion qe sa soer fist, sa seisine serra

¹ Old editions, lie.| ² Old editions, *Mombray*.

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A.D. 1343. with the fact that she is named in the deed by which the rent was granted to William Kirke, her seisin shall be understood, for suppose the inheritance descended to two parceners, and one occupied the entirety, and they afterwards enfeoffed me by a deed, I say that I shall have warranty as well against the one as against the other, for by law the land passed by the feoffment of one as much as by the feoffment of the other; therefore also it seems in this case, and we demand judgment, &c.—But observe that it is not quite the same case where the feoffment is made by the two of something which descended to them, as in the case which *Grene* put, and where the feoffment is made of something else, as in this case.—And at last the avowry was adjudged good.—*Blaykeston*. Then we say that whereas he supposes that William Kirke granted the rent to his brother, we will aver that his brother never had anything by grant from William; ready, &c.—*Thorpe*. William Kirke granted the rent to our brother, and he was seised by force of the grant; ready, &c.—And in such manner they were at issue.

Assise of
Novel
Disseisin
of com-
mon of
pasture in
E. And
the plaint
was made
as for
common
for a cer-
tain num-
ber of
beasts.
See above
Trinity
Term in
the 16th¹
year in an
avowry
in respect
of similar
matter.

(23.) § John Bourne, Prebendary of the prebend of Benlegh in the church of N., parson of the church of A., brought an Assise of Novel Disseisin, in respect of common appurtenant, &c., and made his plaint to common in one thousand acres of land, certain acres of meadow, and certain acres of pasture, with thirty oxen or beasts of the plough, twelve cows, twelve calves, and a certain number of sheep and of lambs, to wit, in a moiety of the land every year after the corn is cut and carried, until the land is sown anew,

¹ Y.B., Trin. 16 Edw. III., No. 38.

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entendu, ove ceo qele est nome en le fait par quel A.D. 1343.
 le rente fuit graunte a William Kirke, qar jeo pose
 qe heritage descendi a ij parceners, et lun occupa¹
 lenterete, et apres eux moy enfeffent par un fait,
 jeo dis qe jeo avera la garrantie auxi bien vers lun
 come vers lautre, qar par la ley la terre passa
 auxi bien par feffement lun come par feffement
 lautre; par quei auxi semble il icy, et demandoms
 jugement, &c.—*Sed vide* qil nest pas tout un la ou
 le feffement est fait par les ij de chose qe les de-
 scendi, come en le cas qe *Grene* mist, et la ou
 feffement est fait dautre chose come il est en le
 cas icy.—Et a darrein lavowere fuit agarde bone.—
Blaik. Donques dioms qe la ou il suppose qe
 W. K. graunta le rente a son frere, nous voloms
 averer qe son frere navoit unques riens de graunte
 W.; prest, &c.—*Thorpe.* W. K. granta le rente a
 nostre frere, et il seisi par force del graunt; prest,
 &c.—Et en tiele manere ils fuerent a issue.

(23.)² § Johan Bourne,⁴ Provandrer de la provandre Assise de
 de Benlegh⁵ en leglise de N., persone del eglise Novele
 de A., porta Assise de⁶ Novele Disseisine de Disseisine
 comune⁷ appurtenaunte, &c., et fist sa plainte a de comune
 comuner en mille acres de terre, certaines acres de de pasture
 pree, certaines acres de pasture, ove xxx boefs ou affres, en E. Et
 xij vaches, xij⁸ veaux, certain nombre de berbitz et la plainte
 des agneux,⁹ saver, en la moite de la terre chescun fet com de
 an apres les blees siez et emportes, tange la terre soit comune a
 certain
 noubre
 de bestes.
Vide supra
Trinitatis
xxj^o, en
 avowere,
 de con-
 simili
materia.³
 [17 Li.
 Ass., 7.]

¹ Old editions, occupie.

² From L., Harl., 22,552, and 25,184, until otherwise stated.

³ The marginal note subsequent to the word pasture is from 25,184 alone. In Harl., it is Assise de comune de pasture.

⁴ L., and Harl., Broun

⁵ All the MSS. except 25,184, B.

⁶ The words Assise de are omitted from 25,184.

⁷ L., come, instead of de comune. The words are omitted from Harl.

⁸ L., ove xij.

⁹ Harl., anneux; 22,552, aigneux; 25,184 eignes.

No. 23.

A.D. 1343. and in the rest during the whole year, in the meadow after the hay is carried until Candlemas, and in the pasture with eighteen oxen or beasts of the plough out of the thirty, from the Feast of St. Augustine in May until All Saints, and in case the defendant, or any other person who may be tenant of the soil shall put in his beasts before the said Feast of St. Augustine, the plaintiff shall then put into the pasture the aforesaid eighteen oxen or beasts of the plough, with the rest of the beasts, from the Invention of the Holy Cross until All Saints.—*R. Thorpe*. Judgment of the plaintiff, for he complains that he is dis-seised of a profit in our soil which is to be taken at our will, and that cannot be a freehold: for he supposes that, if we put our beasts into the pasture before the Feast of St. Augustine, he shall put his in, and otherwise not, so that it is at our will whether he shall have common or not, and if he were to recover no one would effect execution of the judgment except at our will, to wit, if we did not choose to put in our beasts.—*W. Thorpe*. Common appendant cannot be used otherwise than by prescription of time, so that, according as it has been used so shall it be claimed and recovered, and it is right that every one should have his plaintiff in accordance with his facts. And suppose you grant to me that whenever you come to your manor of B. I shall have fuel or litter, that which you allow to me there

No. 28.

resemble, et en le remenant par tut lan, en le pree A.D. 1843.
 apres les feynes levez¹ tange la² Chaundelure,³ et
 en la pasture ove les xvij boefs ou affres de les
 xxx, del Fest Seint Augustyn⁴ en May⁵ tange les⁶
 Touz Seintz, et, en cas qe le defendant ou asqun
 autre qe soit tenaunt del soil⁷ mette einz ses bestes
 avant le dit⁸ Fest de Seint Augustyn,⁴ adonques le
 pleintif mettra en la pasture les avantditz xvij boefs
 ou affres [ove le remenant des bestes, de la Inven-
 cion de la Seinte Croys⁹ tange a les Touz Seyntz].¹⁰
 —*R. Thorpe.* Jugement de la plainte, qar il se pleint
 estre disseisi dun profit¹¹ en nostre soil¹² qest a
 prendre a nostre volonte, [qe ne poet estre fraunk-
 tenement: qar il suppose qe si nous mettoms nos
 bestes en la pasture avant la Fest de Seynt
 Augustyn, il mettra les soens, et autrement nient,
 issint qe cest a nostre volonte]¹³ [sil avera comune
 ou noun, et sil recoverast nul homme ferreit execu-
 cion del jugement forsque a nostre volonte],¹⁴ saver
 si nous ne¹⁵ voudroms mettre nos bestes.—[*W.*]
Thorpe. Comune appendaunt ne poet estre forsque
 par prescripcion de temps use, issint qe solonc ceo
 qele est use issint serra ele clame et recoveri, et
 il est resoun qe chescun homme eit sa plainte solonc
 son fait. Et jeo pose qe vous moi grauntez qe¹⁶
 quele heure qe vous venez¹⁷ a¹⁸ vostre maner de B., qe
 jeo averay¹⁹ fouwaille²⁰ ou litere, ceo qe vous lirrez²⁰

¹ 22,552, uniz et levez.² L., al.³ Harl., Chauntdelour.⁴ Harl., Austyn; 22,552, Augstin.⁵ Harl., Mayi. The words en May are omitted from L.⁶ L., al Fest de.⁷ L., soul.⁸ dit is omitted from L.⁹ L., Croice; 25,184, Croiz.¹⁰ The words between brackets are omitted from 22,552.¹¹ L., profit.¹² L., soul; the words nostre soil are omitted from 25,184.¹³ The words between brackets are omitted from Harl.¹⁴ ne is omitted from L.¹⁵ qe is from L. alone.¹⁶ L., veignez.¹⁷ L., de.¹⁸ L., avera.¹⁹ 22,552, fuaille.²⁰ Harl., lerretz; 22,552, lerrez.

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A.D. 1343. is at your will—viz., whether you will come thither or not—but if you come and prevent me from taking that profit, I shall have an Assise; and so also in respect of a corody granted to me upon condition I shall have an Assise; and for the same reason I shall have an Assise in this case upon my facts and upon the custom.—*Pulteney*. If you had made your plaint in general terms, as the law purports that you ought to do, particularly in respect of something which is appendant, which is given of common right, you would be aided by your facts upon verdict, but not now.—*HILLARY*. What plaint would he have if he claimed common in the pasture only from one Feast till the other? Would he then lose the rest of the time to which he has a right in case you put your beasts in before?—*R. Thorpe*. No; he would make his plaint with certainty in accordance with the custom as to putting in the beasts.—*HILLARY*. He could not do that, because it is possible that at one time you have put them in earlier, and at another time later.—*R. Thorpe*. Judgment of the plaint, inasmuch as he supposes that he is disseised of common for a certain number of beasts as appendant, whereas of common right it would be without number. Besides, he supposes that the thirty oxen or beasts of the plough commoned in the land, meadow, &c., and, at the same time, that eighteen out of the same thirty commoned in the pasture, which is impossible.

Assise of
Common.

§ John de Bourne, Prebendary of the prebend

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illoeqes est a vostre volunte le quel vous voillez ^{A.D. 1343.} venir illoeqes¹ ou noun, mes si vous venez² et moy³ destourbez de cel profit, javeray Lassise; et auxi dune corodie graunte sur condicion⁴ a moy,⁵ javeray Assise; et par mesme la resoun averay jeo Assise en ceo cas sur mon⁶ fait et sur lusage.—*Pult.* Si vous ussez fait general plainte, come⁷ ley voet que vous duisiez faire, nomement de chose appendaunte, qest done de comune dreit, vous serrez eide par⁸ vostre fait sur⁹ verdict, mes ore nient.—*HILL.* Quele plainte avereit il sil clamast en la pasture la comune de lun Fest¹⁰ tanqe a lautre soulement? Donqes perdreit¹¹ il le remenant du temps a quel il ad dreit en cas qe vous meissez vos bestes einz devant? —[*R.*] *Thorpe.* Nanil; il se pleindreit en certain solonc ceo qe ceo fuit¹² use de mettre.—*HILL.* Ceo ne put il, qar par cas vous avez mys a un temps plus toust, et a autre temps plus tard.—[*R.*] *Thorpe.* Jugement de la plainte de ceo qil suppose destre disseisi de comune a certain nombre des bestes come appendauntz, ou de comune dreit ceo serreit sanz nombre. Ovesqe ceo, il suppose qe les xxx boefs ou affres comunerent en la terre, pree, &c., et, a mesme le temps, qe xvij de mesmes les xxx comunerent en la pasture, qest impossible.

§ Johan¹³ de Bourne, Provandrer¹⁴ de la provandre¹⁵ ^{Assise de} Comune.

¹ illoeqes is omitted from L.

² L., veignez.

³ L., mes.

⁴ 22,552, autiel condicion.

⁵ The words a moy are omitted from L., and Harl.

⁶ L., and Harl., mesme le.

⁷ 25,184, comune.

⁸ 22,552, and 25,184, sur.

⁹ 22,552, and 25,184, par.

¹⁰ 22,552, fait.

¹¹ L., and Harl., prendreit.

¹² 22,552, se fist, instead of ceo fuit.

¹³ This report of the case is described as a "residuum" in the edition of 1679, and is printed by itself as No. 44 in all the old editions. No MS. of it has been found, and there is no reference to it in Fitzherbert's Abridgment.

¹⁴ Old editions, Prebendary, or Prebendarie.

¹⁵ Rastell, prepende.

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A.D. 1243. of B., brought an Assise of Novel Disseisin in respect of common of pasture against one Bartholomew de Bourne and several others, and complained that he was disseised of his common of pasture in B., and made his plaint to common in one thousand acres of arable land, and twenty acres of meadow, and forty acres of pasture, as appendant to his freehold in the same vill, to wit, to common with thirty oxen and beasts of the plough, and with one hundred and twenty sheep, and one hundred and twenty lambs, &c., in a moiety of the arable land from the time that the corn is cut and carried until the land is sown anew, and with respect to the other moiety of the same land he claimed to common from a certain day until a certain day; and in the meadow he claimed to common from the time that the hay is cut and carried until the Annunciation of Our Lady; and in the pasture he claimed to common with twenty-eight oxen and beasts of the plough out of the afore-said oxen and beasts of the plough previously named, as above, from the Feast of St. Augustine in May until the Feast of All Saints, and if it should so be that Bartholomew or any of the commoners should put their beasts into that pasture to feed before the said Feast of St. Augustine that then the plaintiff should put in the twenty-eight oxen, and should common there with the twenty-eight beasts from the day that any of the commoners first put in their beasts until the Feast of All Saints; also to common in the same pasture with the rest of the said 30 oxen wholly from the Feast of the Invention of the Holy Cross until the said Feast of the Annunciation.—*Pulteney.* Sir, judgment of the plaint, for one cannot have Assise of any freehold except freehold which is certain; now he shows that he ought to common in the pasture from a certain day to a certain day, and that if it shall so be that any of the commoners shall put in their beasts before the said day, then he shall

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de B., porta une Assise de Novele Disseisine de A.D. 1343. comune de pasture vers un Bartelmeu de Bourne et plusours autres, et se pleint estre disseisi de sa comune de pasture en B., et fist sa plainte a comuner en mille acres de terre arable, et xx acres de pree, et xl acres de pasture, come appendaunt a son franktenement en mesme la ville, saver, a comuner ove xxx boefs et affres, et ove c et xx moutons, et c et xx owels, &c., en la moite de la terre arable de temps qe les blees sont scies et amenes tanqils sont resemes, et de lautre moite de mesme la terre il clame de comuner de certain jour tanqe a certain jour; et en le pree il clame de comuner de temps qe les feines sont fauches¹ et amenes tanqe a Lannunciacion de Nostre Dame; et en pasture il clame de comuner ove xxviiij boefs et affres de les avant dits boefs et affres avant nomes, *ut supra*, de la Feste de Saint Austen en Mai tanqe al Feste de Tous Seints, et si issint fuit qe Bartelmeu ou nul des comuners mettreient lour bestes en cele pasture pur pestre avant le dit Feste de Saint Austen qe adonques le pleintif mettreit eins les xxviiij boefs, et comunereit illoeques ove les xxviiij bestes del jour qe nul des comuners mist eins primes lour bestes tanqe al Feste de Tous Seints; auxi de comuner en mesme la pasture ove le remenant des dits xxx boefs entierement de la Feste de la Invencion de la Sainte Crois tanqe al dit Fest Dannunciacion.—*Pult.* Sire, jugement de la plainte, qar homme ne poet pas aver Assise de nul franktenement si non qe de franktenement qest en certain; ore il moustre qil deit comuner en la pasture de certain jour tanqe a certain jour, et si issint soit qe nul des comuners mettra eins lour bestes avant le dit jour, qe adonques a mesme

¹ Earliest editions, franchises.

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A.D. 1343. begin to common on the same day, so that by his plaint he himself shows that the time during which he shall make use of his common shall come from the will of another person, and thereby this plaint is made without any certainty of a freehold; wherefore judgment of the plaint.—And thereupon the parties were adjourned into the Bench.—*Pole*. Sir, our common is sufficiently certain, to wit, from the Feast of St. Augustine until the Feast of All Saints, and though the time of their common shall be enlarged if any of the commoners put in their beasts before the said day of St. Augustine, that which was previously made certain in our plaint is not thereby made uncertain, and consequently our plaint is good.—*Seton*. If you intended to make your plaint certain, you should have spoken only of your common from the day of St. Augustine until the Feast of All Saints, and have omitted the rest, which was uncertain.—*Pole*. Then we should have lost the rest for ever, for as I have used my common, so I shall make my plaint in accordance, as, for instance, suppose you grant to me common in your land every year that it lies fallow, it is at your will whether you will sow your land or not, and in case your land lies fallow, and you deforce me of my common, I shall have Assise, and shall make my plaint in accordance with your grant to me to common, and yet that is uncertain. So here.—And at last he was ousted from his exception.—*Pulteney*. Again, judgment of the plaint, for he has claimed this common as appendant to his freehold, whereas one who has common appendant ought to have there beasts without number until admeasurement has been made; and he has claimed this common as appendant, and also

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le .jour il comencera de comuner, issint par sa A.D. 1348.
 plainte il mesme moustre qe le temps en quel il
 usera¹ sa comune vendra dautri volunte, et par
 taunt ceste plainte faite en non certain dun frank-
 tenement; par quei jugement del plainte.—Et sur
 cel² parties fuerent ajournes en Bank.—*Pole.* Sire,
 nostre comune est assez certain, saver, de Feste de
 Saint Austen tanqe al Fest de Tous Seints, et
 coment qe le temps de lour comune serra enlarge
 si nul des comuners mette einz lour bestes avant
 le dit jour de Saint Austen, par quei ceo qe est
 fait certain avant en nostre plainte par ceo nest
 pas fait noncertain, et *per consequens* nostre plainte
 est bone.—*Setone.* Si vous voedrez³ aver fait vostre
 plainte certeine, vous duissez soulement aver parle
 de vostre comune del jour de Saint Austen tanqe al
 Feste de Tous Seints, et aver entrelesse le remenant,
 qe fuit noncertain.—*Pole.* Donques ussoms perdu le
 remenant a tous jours, qar solonqe ceo qe jay use
 ma comune, solonqe ceo ferroi jeo ma plainte, come,
 en cas, jeo pose qe vous a moy grauntez comune
 en vostre terre chacun an qil gist fresche, il est a
 vostre volunte le quel vous voillez semer vostre terre
 ou non, et en cas qe vostre terre gist fresche, et
 vous deforces ma comune, javera Lassise, et ferai
 ma plainte solonqe ceo qe vous moy grauntez de
 comuner, et uncore ceo est⁴ noncertain. *Sic hic.*
 —Et al derrein il fuit ouste de ceste chalange.—
Pult. Uncore, jugement de plainte, qar il ad clame
 cele comune come appendant a son franktenement,
 ou cesty qe ad comune appendant il la deit aver
 bestes sans nombre tanqe amesurement soit fait; et
 il ad clame cele comune come appendant, et auxi

¹ Edition of 1679, user, instead
 of il usera.

² Edition of 1679, celes, instead
 of sur cel.

³ Edition of 1679, voidres.

⁴ Edition of 1679, en.

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A.D. 1343. for a certain number of beasts, which cannot be at the same time ; wherefore judgment of the plaint.—*Grene.* We were adjourned into this Court on another point, on which judgment is given here before you ; wherefore we do not understand that he shall be admitted to another exception.—*HILLARY.* He shall be, because he shall falsify your plaint by as many causes as he can, and you can maintain it by as many matters as you know ; wherefore answer.—*Grene.* We tell you that we have made our plaint in accordance with our user of the common, and that he does not deny ; wherefore we demand judgment, and we pray the Assise.—And afterwards he waived that exception, and demanded judgment of the plaint, because the plaintiff claims by this plaint common for thirty oxen in certain land from a certain time to a certain time, and within the same time he claims common for the twenty-eight beasts out of the same thirty beasts in the pasture, and thus by his plaint he supposes that the twenty-eight beasts feed at one and the same time in different places, which cannot be ; wherefore we demand judgment of the plaint.—*Pole.* That does not follow, for I can have a right to common in divers places with one and the same beast, but it does not therefore follow that such a beast ought to feed in both places at one and the same time ; but I can always choose in which of the two places I will make use of my common ; and so also can he here.—*HILLARY, ad idem.* I can grant you common for all manner of beasts in one place, and I shall be able to grant you common for ten oxen in another place, and you will have both the one common and the other, and yet the said ten oxen for which the one common is charged ought [to feed] in the other common because they are parcel of all manner of beasts. And thereby it appears that one may have divers commons for one

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a certain nombre de bestes, qe ne poet estre en- A.D. 1843.
semble; par quei jugement de plainte.—*Grene*. Nous
fumes ajournes sur autre point ceinz, quel est ajuge
cy devant vous; par quei nentendoms pas qil serra
resceu a autre chalange.—*HILL*. Si serra, qar il
fauxera vostre plainte par taunt de causes qil poet,
et vous la poies maintenir par tant de choses qe
vous savez; par quei responez.—*Grene*. Nous vous
dioms qe solonge ceo qe nous avoms use la comune
nous avoms fait nostre plainte, quele chose il ne
dedit pas; par quei nous demandoms jugement, et
prioms Lassise.—Et puis il weiva ceste excepcion, et
demanda jugement del plainte, qar il clame¹ par
ceste plainte comune a xxx boefs en certaine terre de
certain temps tange a certain temps, et deinz mesme
le temps il clame comune a les xxviiij bestes de
mesmes les xxx bestes en la pasture, issint par sa
plainte il suppose qe les xxviiij bestes en un mesme
temps pesterent en divers lieux, qe ne poet estre;
par quei nous demandoms jugement del plainte.
—*Pole*. Ceo nensuist² pas, qar jeo puis aver
droit de comuner en divers lieux ove un mesme
beste, mes par taunt nensuit pas qe tiel beste deit³
pestre en ambideux lieux a un mesme temps; mes
jeo puis tout dis eslire en quel de les ij lieux jeo
voile user ma comune; et auxi poet il icy.—*HILL*,
ad idem. Jeo vous puis granter comune a tous
maneres de bestes en un lieu, et jeo vous purrai
granter comune a x boefs en autre lieu, et vous
averez lune comune et lautre, et uncore les dits x
boefs as queux lune⁴ comune est charge devoient
en lautre comune pur ceo qe ils sont parcele de
toutes maneres de bestes. Et par taunt appiert il
qe homme poet aver divers comunes a un mesme

¹ The edition of 1679, le claimer,
instead of il clame or (as in
Rastell) clame.

² Edition of 1679, nest suist.

³ Edition of 1679, droit.

⁴ Old editions, le un.

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A.D. 1343. and the same beast, and in one and the same season;
consequently this plaint is good, &c.

Audita (24.) § John Somery made a statute merchant to

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beste, et en une mesme seison; *per consequens* ceste A.D. 1343.
 plainte est bone, &c.

(24.)¹ § Johan Somery fist estatut marchaunt a *Audita*

¹ From L., Harl., 22,552, and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Easter, 17 Edw. III. R^o 227. It begins thus: "Præceptum fuit "Vicecomiti [Devoniæ] Cum ex "parte Johannis de Cheverestone, "Militis, domino Regi esset ostensum quod cum Johannes Somery "de Comitatu suo nuper recognovisset se debere; juxta formam "Statuti pro Mercatoribus apud "Actone Burnel editi, Nicholao "de Teukesbury, clerico, trescentas "libras eidem Nicholao ad certos "terminos in literis obligatoribus "de recognitione illa contentos "solvendas, et licet idem Johannes Somery præfato Nicholao "de debito prædicto postmodum "plene satisfecerit, et literas "acquietantiæ ipsius Nicholai de "satisfactione hujusmodi quæ "penes præfatum Johannem de "Cheverestone ad cujus manus "quædam terræ et tenementa "quæ fuerunt prædicti Johannis "Somery die recognitionis hujusmodi in Lyndrigge in dicto comitatu suo per venditionem postmodum devenerunt existunt haberit, prædictus tamen Nicholaus, "machinans præfatum Johannem "Somery et Johannem de Cheverestone in hac parte indebite prægravari, asserens sibi de "dictis trescentis libris ad terminos solutionis inde non fuisse "satisfactum, quandam certificationem super non satisfactionem "hujusmodi in Cancellaria Regis

"fieri procuravit, cujus prætextu "ac cujusdam processus coram "Justiciariis hic super quodam "brevi Regis super certificatione "illa impetrato per ipsum Vicecomitem præfatis Justiciariis hic "retornato habiti, per quod breve "præceptum fuit Vicecomiti quod "corpus prædicti Johannis Somery, "si laicus esset, caperet et in prisona Regis salvo custodiri faceret "donec eidem Nicholao de centum quadraginta et quatuor "libris de prædictis sexcentis "libris esset satisfactum, ad "quod breve idem Vicecomes "retornavit quod prædictus Johannes Somery inventus non "fuit, per præfatos Justiciarios "hic consideratum existit quod "omnia terræ et tenementa quæ "fuerunt ipsius Johannis Somery "die recognitionis prædictæ in Comitatu suo præfato Nicholao "liberarentur, cujus considerationis virtute prædictæ terræ "et tenementa in Lyndrigge quæ "ad manus præfati Johannis de Cheverestone ex perquisito suo devenerunt, ut prædictum est, "inter alia terras et tenementa "quæ fuerunt prædicti Johannis "Somery die recognitionis prædictæ præfato Nicholao sunt "liberata tenenda ut liberum tenementum suum quousque "prædictum debitum levaverit de "eisdem, ad damnum ipsius "Johannis de Cheverestone non "modicum et gravamen, per "quod eisdem Justiciariis hic

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A.D. 1343. Nicholas de Teukesbury, and afterwards Nicholas sued execution. John sued an *Audita Querela* to the Justices containing a statement that he had made satisfaction to Nicholas, and that Nicholas had delivered the statute to him in lieu of acquittance, and that it was cancelled. And upon that Nicholas appeared, and they were at issue. And afterwards John was nonsuited, and therefore execution was awarded. Afterwards John de Chevereston came, and, as tenant of part of the lands which were John Somery's on the day of the making of the recognisance, supposed that he had purchased them from John Somery, and sued an *Audita Querela* against Nicholas, supposing that Nicholas had released the debt to John Somery, and made *profert* of the deed. And the writ purported that execution had been awarded against Somery, and that part of the lands of John de Chevereston were delivered, "*et timens*" that the *Querela* on a statute merchant, for one who was a stranger, a purchaser from the person who made the statute, before execution was had against the person who now sues this writ; wherefore execution was awarded, because by law such a writ is not given for a stranger, nor yet a *Super-sedeas* before he has been aggrieved by execution.

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A.D. 1343. residue would be delivered, &c.—*Thorpe*. You see plainly how he makes himself to have the estate of John Somery, who heretofore by his nonsuit lost the advantage of preventing our execution, and consequently this person who is his assignee lost it also; besides, even though the nonsuit will not take away the action, still, when he elected to prevent us from having execution in one way, to wit, by the cancelling of the statute, he lost for ever the advantage of preventing it in another way, and consequently the person also who is now his assignee. On the other hand, if he were admitted to this suit, he would possibly be nonsuited, and then his assignee would come, and would sue another *Audita Querela* on another acquittance, and so would prevent our execution *in infinitum*; wherefore we pray execution.—*Derworthy*. Nonsuit does not

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remanant serreit livere, &c.—*Thorpe*. Vous veiez bien A.D. 1343. coment il se fait aver lestat Johan Somery, qe autrefoitz perdit lavantage par sa nounsuyte a destourber nostre¹ execucion, et *per consequens* cestuy qest son assigne; ovesqe ceo, coment qe la nounsuyte ne toudra² pas accion, unqore, quant il eslust par autre chymyn a nous destourber dexecucion, saver, par lestatut dampne,³ il perdist lavauntage a touz jours par autre voie a le destourber, et *per consequens* cestuy qest soun assigne.⁴ Dautre part, sil fut resceu a cest suyte, il serreit par cas noun suy, et puis vendreit lassigne de cestuy, et suyereit sur autre acquitaunce autre⁵ *Audita Querela*, et *sic in infinitum* destourberoit nostre⁶ execucion; par quei prioms execucion.⁷—*Derworthi*. Nounsuyte ne toude

¹ 22,552, and 25,184, mes. The word is omitted from L.

² L., teyndra; 25,184, tendra.

³ 22,552, relees, instead of lestatut dampne.

⁴ The words qest soun assigne are from L. alone.

⁵ The words sur autre acquitaunce autre are omitted from L.

⁶ nostre is omitted from L., and Harl.

⁷ The plea, on behalf of Nicholas, was, according to the roll, "quod alias, quando executio super recognitionem prædictam considerata fuit versus prædictum Johannem Somery, Vicecomes returnavit quandam inquisitionem per ipsum inde captam, per quam compertum fuit quod idem Johannes Somery tunc habuit quædam terras et tenementa in Lyndrigge quæ tunc liberavit ipsi Nicholao tenenda, &c., qui quidem Johannes Somery, ut ille qui se sentiit tunc gravatum per executionem

" prædictam, secutus fuit quodam breve, quod dicitur Ex Parte, versus ipsum Nicholaum, supponendo ipsum satisfacisse præfato Nicholao de prædicto debito et prædictum statutum sibi liberatum fuisse loco acquietantiæ, &c., et processum super brevi prædicto secutus fuit usque ad captionem Juratæ in quam iidem Nicholas et Johannes hinc inde se posuerunt super finalem exitum negotii prædicti, quæ secta fuit peremptoria in se, et quem exitum prædictus Johannes Somery non fuit prosecutus, per quod executio prædicta in suo robore stetit et vigore, et ulterius executio fuit considerata de residuo terrarum et tenementorum quæ fuerunt ejusdem Johannis Somery, quo tempore prædictus Johannes de Cheverestone, ut ille qui nihil sentiit se gravatum ratione executionis prædictæ, nihil questus fuit nec

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A.D. 1343. take away an action in this case; and besides we are a stranger to the suit of which you speak; and we tell you that, long before John Somery made that suit, he enfeoffed us of this parcel of which we are tenant, and which it is our object to discharge, so that at the same time that John Somery sued, who could only sue in discharge of that of which he was tenant, this suit was given to us, and a delay in time does not take away the suit in this case; and though it was possibly covin on your part in order to charge us, that does not turn to our damage; judgment, since you do not deny your deed, how we ought to depart.—*Seton*. If you ought to have the suit, it should be on this special matter that you were tenant before Somery sued, and of that your writ should make mention, and it does not do so; wherefore you cannot be aided by that upon this writ, and we pray execution.—*Pulteney*. I could not know of the suit of John Somery, and, therefore, although mention of it be omitted in my writ, that cannot damage me, and your answer as to that is saved to you; and, since the reverse is not supposed by my writ, and I offer to aver the acquittance, if you will deny it, and also that

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pas accion en le cas; et ovesqe ceo nous sumes¹ A.D. 1343.
 estraunge a la suyte dount vous parlez; et vous
 dioms qe, longe temps devant qe Johan Somery fist
 cele suyte, il nous feffa de cele parcelle dount nous
 sumes tenaunt, et quel nous sumes a descharger,
 issint qe a mesme le temps qe Johan Somery suist,
 qe ne put suyre forsqe en descharger de ceo dount
 il estoit tenaunt, ceste suyte nous fut done, et soursis
 de temps ne nous toude pas la suyte en le cas;
 et coment qe par cas il fut de² vostre covyne de
 nous charger, ceo ne tournera pas en damage de
 nous; jugement, de puis qe vous ne dedites pas
 vostre fait, coment nous devons departir.—*Setone*.
 Si vous dussez aver³ la suyte, ceo serreit sur cele
 matere especial qe vous estoiez tenaunt avant qe
 Somery suist, et de ceo vostre bref freit mencion,
 et ceo ne fait il pas; par quei de ceo ne poiez sur
 ceo bref estre eide, et prioms execucion.—*Pult*. Jeo
 ne poay⁴ saver⁵ de la suyte Johan Somery, par
 quei, mesqe ceo soit entrelesse en mon bref, ceo
 ne poet damager, et vostre respouns quant a cel
 vous est salve, et, del houre qe par mon bref le
 reverse⁶ nest pas suppose, et⁷ jeo tenke⁸ daverer
 lacquittance si vous la voillez dedire, et auxy qe jeo⁹

"aliquem processum inde seque-
 "batur, nec per prædictum breve
 "quod prædictus Johannes sequi-
 "tur nunc, &c., supponitur quod
 "idem Johannes de Cheverestone
 "tenuit tenementa prædicta in
 "Lyndrige ante prædictam execu-
 "tionem consideratam, nec quod
 "ipse habuit acquietantiam ante
 "eandem executionem considera-
 "tam, quod esset modo aliud
 "peremptorium, &c. Et si ad
 "hoc admitteretur nunquam
 "haberet inde executionem, unde
 "petit iudicium si ad istud breve

"quod prædictus Johannes de
 "Cheverestone hic protulit ad
 "retardandum executionem, &c.,
 "necesse habeat respondere. Et
 "petit executionem," &c.

¹ L., fumes.

² All the MSS. except L., qe de.

³ L., averen, instead of dussez
 aver.

⁴ L., peie.

⁵ L., salver.

⁶ Harl., and 25,184, respouns.

⁷ et is omitted from L.

⁸ 25,184, tink.

⁹ 25,184, oeo.

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A.D. 1843. I was tenant of parcel of the tenements before the time at which you suppose that Somery brought the *Gravi Querela*, so that his suit can neither be of any use to me nor be prejudicial to me, and you do not deny it, judgment.—STONORE. His suit ought to have discharged you, had it been in accordance with the truth, and ought also on the other hand to be prejudicial to you, if it was otherwise, since you claim through him; and I tell you plainly that *Audita Querela* is given rather by Equity than by Common Law, for quite recently there was no such suit, and possibly the suit is given only to the first.—PULTENEY. That is not reasonable, for if there were ten tenants, each of them severally would sue to discharge that portion only which he might hold; and the plaintiff is not put to the mischief which is alleged, to wit, that, by reason of the non-suit of divers plaintiffs in divers writs of *Audita Querela*, he would never have execution, for, when Somery was non-suited, execution was awarded with respect to his portion, and so also would it be with respect to our portion if we were non-suited, and so on, with respect to each one after the other, and if any one attained, pending our suit, by means of our feoffment, to parcel of the land which we now hold, he would be excluded if we were nonsuited; but if he were previously seised, he would have the suit on facts other than those which we use, because delay in time does not take away an action; and even though we could rely upon the acquittance as good, still the execution against John Somery would stand in force.—HILLARY. Even though

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fuisse¹ tenant de parcelle des tenements avant le A.D. 1343. temps qe vous supposez² qe Somery porta le *Gravi Querela*, issint qe sa suyte ne moy poet valer ne³ grever,⁴ et ceo ne dedites vous pas, jugement.—Ston.⁵ Sa suyte vous⁶ dust aver descharge, si ele ust este veritable, et auxi dautre part grever,⁴ si ele fut autre, del houre qe vous clamez par luy; et jeo vous die bien qe *Audita Querela* est done plus dequite qe de comune ley, qar ore tarde il ny avoit pas tiel suyte, et par cas la suyte est done forsque al primer.—*Pult.* Ceo nest pas resoun, qar si x fuissent tenaunts, severalment chescun suereit⁷ a descharger forsque de la porcion qil tendreit; et le pleintif nest pas a meschief qest allegge, saver,⁸ par nounsuyte de divers pleintifs⁹ en divers *Audita Querela* qil navereit¹⁰ ja¹¹ execucion, qar, quant Somery¹² fut nounsuy, execucion fut agarde en sa porcion, et auxi serra en nostre porcion si nous fuissoms nounsuy, et issint de chescun apres autre, et si nul avenist,¹³ pendaunt nostre¹⁴ suyte, par nostre¹⁵ feffement, a parcelle de la terre qe nous tenoms ore, il serreit forclos [si nous fuissoms nounsuy; mes sil fut seisi devant, il avereit la suyte sur autre fait qe nous ne¹⁶ usoms, qar sursise de temps ne toude pas accion; et mesqe nous puissoms attendre¹⁷ lacquittance pur bon, unqore lexecucion vers Johan Somery esterra en sa force].¹⁸—HILL. Mesqe

¹ L., and Harl., su; 25,184, fut.

² The words qe vous supposez are omitted from L.

³ The words valer ne are omitted from 25,184.

⁴ 25,184, grevir.

⁵ L., *Setone*.

⁶ 25,184, ne.

⁷ L., and Harl., serreit; 22,552, suyra.

⁸ 22,552, qest; 25,184, cest assaver.

⁹ 22,552, pleintes.

¹⁰ L., avereit.

¹¹ 22,552, la.

¹² All the MSS. Somery quant il, instead of quant Somery.

¹³ 25,184, evenist.

¹⁴ L., la.

¹⁵ Harl., vostre.

¹⁶ ne is omitted from L.

¹⁷ L., atteyndre.

¹⁸ The words between brackets are omitted from 22,552.

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A.D. 1243. execution were awarded against Somery and not sued out, one would stay execution pending your suit, for by your suit the whole would possibly be discharged; and so it is in Debt and Trespass that, notwithstanding a judgment rendered against one, another named in the writ can afterwards discharge him against whom the judgment was rendered.—*Thorpe*. This suit is not given to him before he is charged, and that by execution effected in his lands, and that is not supposed in his writ, but that execution is to be made; wherefore, &c.—*Pole*. As well before as after, and particularly after the award made against us.—*KELSHULLE*. If he could have such suit in case execution were awarded and effected against him, for the same reason he will have it now; and it is not reasonable to oust him from his tenancy, and give him suit hereafter, when he can discharge himself while being in his tenancy.—*SHARDELOWE*. Such suit was never given before the party felt himself aggrieved, and this suit is taken entirely on that one word “fears,” which is in respect of a matter that may be prejudicial in time to come.—*Pulteney*. Our writ supposes that part of our land is now delivered, and part to be delivered, and so we are now prejudiced.—*HILLARY*. Suppose you have nothing of the land, still, on your false suggestion, the execution of the whole will be suspended, pending your suit, and afterwards you will be non-suited,

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execucion fut agarde vers Somery, et noun pas suy,¹ A.D. 1343. homme surserra de faire execucion pendant vostre² suyte, qar par vostre suyte tout serreit descharge par cas; et issint est il en Dette³ et Trespas,⁴ qe *non obstante* jugement fait vers un, autre nome en bref poet descharger apres celuy vers qi le jugement se fist.—*Thorpe*. Ceste suyte nest pas done a luy⁵ avant qil soit charge, et ceo par execucion fait en ses⁶ terres, et ceo nest pas suppose par son bref, mes qele est a faire; par quei, &c.—*Pole*. Si bien avant come apres, et⁷ nomement apres lagarde fait vers nous.⁸—*Kels*. Sil avereit tiel suyte en cas qe execucion fut agarde et fait vers luy, par mesme la resoun il avera ore; et il nest pas resoun de luy oster de sa tenaunce, et luy doner autre foith suyte, la ou en sa tenaunce il se poet descharger.—*Schard*. Unques ne fuit tiel suyte done avant qe partie se sentist⁹ greve,¹⁰ et ceste suyte est pris tout sur une parole de *timet*,¹¹ qest de chose qe purra¹² grever¹³ en temps a vener.¹⁴—*Pult*. Nostre bref suppose qe partie de nostre terre¹⁵ est ore livere, et partie a liverer, et issint sumes ore greve.—*Hill*. Jeo pose qe vous neiez¹⁶ rien de la terre,¹⁷ unqore sur vostre¹⁸ faux suggestioun, pendaunt vostre¹⁹ suyte, lexecucion de tout serra suspendu, et puis serrez nounsuy, et

¹ 22,552, fait.² L., cest.³ L., indoute; 25,184, endente, instead of en Dette.⁴ The words et Trespas are omitted from L.⁵ The words a luy are omitted from L.⁶ All the MSS. except Harl., ces.⁷ et is from L. alone.⁸ The report ends here in 22,552.⁹ L., sensait; 25,184, centist.¹⁰ greve is omitted from 25,184.¹¹ L., *detinet*, instead of *de timet*.¹² L., serra.¹³ L., greve; 25,184, grevir.¹⁴ 25,184, venir.¹⁵ The words de nostre terre are omitted from Harl.¹⁶ L., qil navoit, instead of qe vous neiez.¹⁷ The words de la terre are omitted from 25,184.¹⁸ vostre is omitted from 22,552, and 25,184.¹⁹ Harl., la.

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A.D. 1848. and afterwards another will come, and afterwards a third, and will make like suit, and thus the statute will never be put in execution.—*Pulteney*. Suppose Somery had not sued an *Audita Querela*, it is certain that I should have this suit, and his suit does not take away my action, and there is no more mischief now than there would be in the case which I have put; and suppose this were a recovery, in which case the plaintiff would, after a year, have to sue a *Scire facias*, and the ter-tenants were warned, one might come and allege that another was tenant, and the second that a third person, and the third that a fourth was tenant, when he came, and the plaintiff would always be delayed because no one would recover until all had been warned, and each one, in such case, would have to discharge only his own portion, but if the finding were against the plaintiff perchance the whole would be discharged; now although execution on statute merchant be to be made without calling ter-tenants to answer, still this suit by *Audita Querela* is in lieu of answer, so that each tenant severally can have suit in lieu of answer, or else they would suffer disherison through the default of another person while they have good cause to hold discharged.—*Thorpe*. This suit is not like a *Scire facias* of which you speak, because in a *Scire facias* they are all made parties to my suit, should I be plaintiff, and I can warn whom I please at my peril, so that, if I be delayed, that is my own fault; but in this case I shall be put to delay by the suit of another person, who possibly has nothing, and you are not

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puis vendra un autre, et puis le tierce, et fra autiel A.D. 1343.
 suyte, et issint serra jammes statut mys en execu-
 cion.—*Pult.* Jeo pose qe Somery neust pas suy
Audita Querela, constat qe javera cest suyte, et sa
 suyte ne toude pas accion, et il y ad nient¹ plus
 meschief a ore qil ne serreit en le cas qe jay mys;
 et mettez qe ceo fut un recoverir,² en quel cas le
 pleintif apres lan covendreit suyr garnisement, et
 terre tenantz fuissent garnis, un vendreit³ et alleg-
 gereit autre tenaunt, et celui le tierce, et le tierce
 le quarte quant il vendreit, et touz jours serra le
 pleintif delaie, pur ceo qe nul recovereit tanqe touz
 fuissent⁴ garnis, et chescun, en tiel cas, avereit a⁵
 descharger forsqe⁶ sa porcion, mes si trove fut⁷
 countre le pleintif par cas tout serreit⁸ descharge;
 ore coment⁹ qe execucion sour¹⁰ statut marchaunt
 soit a faire sanz appeller terre tenantz¹¹ en respouns,
 unqore cest suyte par le *Audita Querela* est en lieu
 de respons, [issint qe chescun tenant severalmment
 poet aver suyte en lieu de respouns],¹² ou autre-
 ment ils serront desheritez par autri default la ou
 ils ount bone cause a tener descharge.—*Thorpe.*
 Cest suyte nest pas¹³ semblable a *Scire facias* dount
 vous parlez, qar la sount¹⁴ ils fait parties a ma
 suyte, si jeo fuisse pleintif,¹⁵ et jeo puisse garnir
 qi jeo voille a moun peril, issint qe, si jeo soy
 delaye, ceo est ma default; mes icy serra en¹⁶ delay
 par autri suyte, qe par cas rien ad, et vous nestes

¹ L., avoit; Harl., anient, or
 avient, instead of y ad nient.

² L., and Harl., reconisaunce.

³ L., vendra.

⁴ L., soient.

⁵ L., respons a.

⁶ forsqe is omitted from L.

⁷ L., soit.

⁸ L., serra.

⁹ L., covynt.

¹⁰ All the MSS. except L., en.

¹¹ L., and 25,184, tenaunce.

¹² The words between brackets
 are omitted from L.

¹³ 25,184, qe.

¹⁴ Harl., serrount.

¹⁵ The words si jeo fuisse pleintif
 are omitted from 25,184.

¹⁶ 25,184, jeo.

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A.D. 1348. put to mischief because you will have a good Assise if you be ousted by execution, and the acquittance be good, or you can have a writ of Covenant against your feoffor.—*Pole*. Assise does not lie, because the tenant will plead against him in bar that his estate was mesne between the recognisance and the suing of execution, and will bar him; and a writ of Covenant does not lie, because the plaintiff will be seised of the freehold.—*Thorpe*. Assise does lie, because against any one who may plead mesne time it is a good plea for the plaintiff, in order to have Assise, to say that the person who pleads it has released his right to himself or to another whose estate he has, so that he had no action; so in the case before us, if this deed be good upon which you take this suit, and if you have this suit, it would follow that you would have your suit which you have taken against us, in respect of the same matter, by writ of Covenant against your feoffor, because, after execution, even though you were yourself tenant of the freehold, still inasmuch as execution on a recognisance made before the feoffment is sued against you, you have, by reason of warranty and acquittance, a writ of Covenant, if you have a specialty, and if you have not it is your own fault, so that on your part you are not put to any mischief if execution be awarded.—*Pole*. No Justice would award Assise to us in this case, nor yet a writ of Covenant.—*Grene*. Suppose you had been tenant by feoffment from John Somery before the suit was commenced by him, still if he delivered this

No. 24.

pas a meschief qar vous aerez bone Assise si vous A.D. 1343.
soiez ouste par execucion, et lacquitaunce soit bone,
ou vous poiez aver bref de Covenant vers vostre
feffour.—*Pole.* Lassise ne gist pas, qar le tenant
luy¹ pledera en barre pur ceo qe son estat fut
mene entre la reconissance et lexecucion suy, et
luy barrera; et bref de Covenant ne gist pas, pur
ceo qe le pleintif serra seisi del frauntenement.—
Thorpe. Lassise gist, qar vers qi qe plede mene
temps² cest bon plee pur³ le pleintif, pur aver
Assise,⁴ a dire qe celui qe plede ad relese son
droit a luy ou a autre qi estat il ad, issint qil navoit
pas accion; *sic in proposito*, si cest fait soit⁵ bon
sur quel vous pernez cest suyte, et si vous avez
cest suyte,⁶ ensuereit qe vous aerez vostre suyte
devers nous⁷ de mesme la chose par bref de
Covenant vers vostre feffour, qar, apres execucion,
tout⁸ fuissez mesmes tenaunt de franktenement,
uncore par taunt qe lexecucion⁹ par reconissance
fait avant le feffement est suy vers vous, vous¹⁰
avez,¹¹ par la cause¹² de garrantie et dacquitaunce,
bref de Covenant, si vous eiez especialte, et si vous
neiez pas cest vostre default demene, issint qe de
vostre part vous nestes pas a meschief si execucion
soit agarde.—*Pole.* Nul Justice agardera Assise a
nous en le cas, ne bref de Covenant nient le plus.
—*Grene.* Posez¹³ qe vous ussez este tenaunt¹⁴ par
feffement Johan Somery avant qe la suyte fut
comence par luy, uncore sil¹⁵ vous liverast ceste

¹ L., la il, instead of le tenant luy.² L., estat.³ Harl., vers.⁴ Assise is omitted from L.⁵ soit is omitted from L.⁶ L., devers nous, instead of si vous avez cest suyte.⁷ The words devers nous are omitted from L.⁸ 25, 184, dit.⁹ L., par execucion.¹⁰ L., et vous.¹¹ L., lavez.¹² L., clause.¹³ L., Posoms.¹⁴ L., tenaunt en le cas.¹⁵ L., si.

No. 24.

A.D. 1343. acquittance to you after his suit was commenced on the cancelled statute, as he supposes, which suit he took and chose in lieu of acquittance, in this way this deed, were it ever so good, lost its force for him, and it can never be of any avail for you; and if it was delivered to you before, your writ should include such matter; and, if your matter be truly declared, you will have Assise, for one sees plainly every day that although it be contrary to law that any one should purchase land of the person against whom I have my writ pending, yet if I release to him who has thus purchased, before my judgment, or after my judgment if I after it sue execution, he shall have Assise: *a fortiori* in this case.—They were adjourned to Trinity Term.—PARNING. The writ which came from the Chancery purports that the Justices should hear you as to this suit in case execution was made of your lands; but they have awarded a *Supersedeas* by a judicial writ in favour of you, who are a stranger, and not a party, and this latter writ is not warranted by the Original, and therefore this *Supersedeas* has issued contrary to law.—And on this matter a writ came to the Justices, directing that, notwithstanding the *Supersedeas* which issued without warrant, they should stay proceedings [on the *Audita Querela*] until execution was made.—Pulteney. It has always been law in *Audita Querela* that a *Supersedeas* should issue in respect of execution which remained to be made, and when we are aggrieved by execution in respect of parcel of our lands, although the whole was not delivered, the suit was given to us by law, and therefore it is reasonable that execution of the rest should be suspended, when the object of our suit is to annul the whole.—STONORE. By the Sheriff's return we are apprised that none of your lands are delivered; consequently,

No. 24.

acquitaunce puis sa suyte comence sur lestatut A.D. 1248. dampne, come il suppose, quele suyte il prist et eslust en lieu dacquitaunce, issint qe ceo fait, fut il ja si bon, perdist sa force pur luy, jammes¹ ne purra il valer pur vous; et sil fut livre adevant, vostre bref comprendreit tiel matere; et,² si vostre matere soit veritable declere,³ vous aerez Assise, qar homme veit bien tout le jour qe tout soit ceo coudre ley qe nul purchace terre de celuy vers qi jai mon bref pendaunt, unqore si jeo relesse a celuy qe issint ad purchace, avant moun jugement,⁴ ou apres moun jugement si apres jeo suy execucion, il avera Assise: a plus fort en ceo cas.—*Adjornantur Termino Trinitatis*.—PARN.⁵ Le bref qe vint de la Chauncellerie voet qe les Justices vous oyassent a ceste suyte en cas qe execucion fut fait de vos terres; mes par bref judiciaire⁶ a vous qestes estraunge, et noun pas partie, ount ils agarde *Supersedeas*, quel bref nest pas garraunti del original, par quei cest *Supersedeas* est issu coudre ley.—Et sur cele matere bref vint as Justices qe *non obstante* le *Supersedeas* qe issit sanz garraunt qils soursessent⁷ tanqe execucion fut⁸ fait.—*Pult.* Touz jours ad este ley en *Audita Querela* qe *Supersedeas* issit dexecucion qe demura a faire, et quant nous sumes⁹ agreve¹⁰ [par execucion de parcelle de nos terres, tout ne fut pas tout livre, la suyte en ley nous fut done, et donques est il resoun]¹¹ qe lexecucion del remenant soit suspendu, quant par nostre suyte nous sumes danienter tout.—STON. Par retourn de Vicounte nous sumes appris qe rienz de vos terres sont liveres; *per consequens*,

¹ 25,184, et jammes.² et is omitted from L., and Harl.³ L., declare.⁴ The words moun jugement are omitted from L.⁵ L., PARUENK.⁶ L., judicial.⁷ Harl., sursessent; 25,184, surseissunt.⁸ L., soit.⁹ Harl., fumes.¹⁰ L., greve.¹¹ The words between brackets are omitted from 25,184.

No. 24.

A.D. 1348. before execution be awarded on your lands, you, who are a stranger, shall not have the suit.—SEARSHULLE. Because the *Supersedeas* issued without warrant, sue execution.

No. 24.

devant qe execucion¹ soit agarde sur vos terres, vous, A.D. 1343.
gestes estraunge, naverez pas la suyte.—SCHAR. Pur *Judicium*.²
ceo qe *Supersedeas* issit sanz garraunt, suez execucion.³

¹ execucion is omitted from L.

² The marginal note is from Harl. alone.

³ The conclusion of the case appears upon the roll as follows:—

“Dies datus est eis hic in Octabis
“Sanctæ Trinitatis in statu quo
“nunc, salvis partibus, &c. . . .
“Ad quas Octabas Sanctæ Trini-
“tatis veniunt tam prædictus
“Nicholaus quam præ-
“dictus Johannes de Cheverestone
“ Et super hoc dominus
“Rex mandat breve suum claus-
“um Justiciariis suis hic in hæc
“verba.” The writ contains a
recital of the matters appearing
on the roll in relation to this
case, and continues:—“Ac jam
“ex gravi querela prædicti Nicho-
“lai accepimus quod, licet judi-
“cium prædictum adhuc debite
“executum non existat, ad prose-
“cutionem tamen prædicti Jo-
“hannis de Cheverestone coram
“vobis virtute dicti brevis nostri
“comparentis et asserentis ipsum,
“præter tenementa prædicta præ-
“fato Nicholao juxta formam
“statuti antedicti liberata tenere
“quædam terras et tenementa in
“Suthwysshe et Luscombe quæ
“fuerunt prædicti Johannis Som-
“ery die recognitionis prædictæ,
“unde metuebat executionem fieri
“debere in hac parte, per breve
“nostrum de judicio præfato
“Vicecomiti quod de executione
“aliquid super recognitione præ-
“dicta de aliquibus terris vel
“tenementis quæ præfatus Jo-
“hannes de Cheverestone tenet in

“balliva sua et quæ fuerunt
“præfati Johannis die recogni-
“tionis prædictæ per quodcumque
“breve sibi prius directum præ-
“fato Nicholao ulterius facienda
“omnino supersedeat, quousque
“aliud habuerit in mandatis, est
“demandatum minus rite et
“contra legem et consuetudinem
“regni nostri Angliæ et contra
“formam brevis nostri vobis, ut
“præmittitur, directi, unde pluri-
“mum admiramur, et quia juxta
“tenorem dicti brevis nostri de
“Audita Querela ad vos non
“pertinuit eandem querelam,
“priusquam dictum judicium
“debite fuisset executum, audi-
“visse, quæ quidem executio per
“dictum breve de Supersedeas
“omnino ponitur in suspensio,
“sicque videtur idem breve minus
“rite et absque waranto emanasse,
“vobis mandamus quod, visis
“tam dicto brevi nostro de
“Audita Querela quam dicto
“brevi de judicio, si inveneritis
“dicto Vicecomiti esse demanda-
“tum ut præmittitur, et vobis
“constiterit dictum judicium
“plene non esse executum, tunc
“judicium illud rite et secun-
“dum legem et consuetudinem
“prædictas exequi demandetis,
“dicto brevi de Supersedeas
“non obstante, processui super
“dicto brevi de Audita Querela
“ulterius tenendo, quousque dic-
“tum judicium debite fuerit
“executum juxta vim et effectum
“prioris brevis nostri supradicti,
“supersedentes.”

No. 24.

A.D. 1348. § John de Chevereston sued an *Audita Querela* comprising matter to the effect that one John Somery had made a recognisance on statute merchant to Nicholas de Teukesbury, which John Somery had enfeoffed him of his lands which he had on the day of the statute, and Nicholas had executed an acquittance of the said money to this same John Somery, and, notwithstanding this, the said Nicholas sued execution upon the same statute, so that he was ousted from part of his lands, and feared to be ousted from the rest, wherefore the writ purported that the Justices should call before them the parties, and should examine the acquittance, and should hear the reasons on either side, and should further do right to the parties.—*Grene*. He cannot maintain this suit, because we tell you that heretofore, to wit, in the 15th year of the present King, John Somery, through whom he supposes his estate to be, and who made the recognisance, according to that which this writ supposes, made like suit against us, and supposed by his writ that we had delivered to him the statute cancelled in lieu of acquittance, and, notwithstanding this, we had sued execution, whereupon we appeared and said that he never had the statute by delivery from us, and thereupon we were at issue, and on the day on which the inquest was to have been taken he did not pursue his suit, and therefore we had execution; and we demand judgment, since we have execution against him whose estate you claim; and by force of law in a case in which he would not be admitted to counterplead our execution for such a cause as that which you

No. 24.

§ Johan¹ de Chevereston² suist un *Audita Querela* A.D. 1343.
compernant tiele matere qe coment un Johan Somery³ *Audita Querela.*⁴
avoit fait une reconisaunce sur un estatut marchant
a Nicole Teukesbury,⁵ le quel Johan Somery³ luy
avoit enfeffe de ses terres queux il avoit jour
destatut, et Nicole avoit fait une acquittance des dits
deners a mesme cestuy Johan Somery,³ et, *hoc non*
obstante, le dit Nicole suist execucion hors de mesme
lestatut, issint qil fuit ouste de partie de ses terres,
et soy douta⁴ destre ouste des plusours, par quei
le bref voloit qe les Justices appellassent⁵ devant eux
les parties, et veissent lacquittance, et oient lour
resouns, et outre ferreient droit as parties.—*Grene*.
Il ne poet ceste suyte meyntener, qar nous vous
dioms qe autrefoith, saver, lan xv le Roi qore est,
J. Somery,³ par qi il suppose son estat, et qe fist
la reconisaunce, solonc ceo qe ceo bref suppose, fist
autiele suyte vers nous, et supposa par son bref qe
nous luy avioms baille lestatut cancelle en lieu
dacquittance, et, *hoc non obstante*, avioms suy execucion,
sur quei nous venimes⁶ et disioms qil navoit unques
lestatut de nostre baillement, sur quei nous fumes
a issue, et al jour qe lenqueste serreit prise il ne
pursuit pas sa suyte, par quei nous avioms execucion;
et demandoms jugement, del houre qe nous avoms
execucion devers celuy qi estat vous clamez; et par
force de ley ou il ne serreit pas resceu de countre-
pleder nostre execucion par tiele cause come vous

"Virtute cujus brevis con-
sideratum est quod prædictus
Nicholaus habeat executionem
de debito prædicto, præfato
brevis de Supersedeas non
obstante."

¹ This report of the case appears
by itself in the old editions as
No. 46. Note 4, p. 17, is applic-
able also to this case.

² In the edition of 1679 are
added the words *Principium supra*.

³ The names are from the record
as in the report above. They are
incorrectly given in the old editions.

⁴ Earliest editions, *douta*.

⁵ In the edition of 1679 this word
is printed *appell'* assent.

⁶ *Rastell, venoms*.

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A.D. 1348. now take, no more seems it that you shall be admitted; wherefore judgment.—*Moubray*. To this John whom you suppose to have made the suit we are entirely a stranger; besides, we tell you that, long before this suit by John was commenced, we were tenant of the same land, so that through his non-suit our freehold ought not to be lost; wherefore, since you do not answer anything with respect to your deed of which we have made *profert*, judgment how we shall depart.—*W. Thorpe*. Your writ does not make mention of the statement that you were tenant before John commenced this suit; wherefore it is to be understood in law that you came to the tenancy rather after this suit than before; and, if this writ be maintained, one will never have execution upon a statute merchant, because the person who made the recognisance will take this kind of suit, and when he has brought the suit to an end will divest himself in favour of another, and will afterwards be non-suited, and the other will afterwards take like suit, and act in the same manner, and so on *in infinitum*; wherefore we do not understand that this writ can be maintained against that which we have said.—*Moubray*. But we are not here in the case which you have put, for we will aver that we were tenant of the freehold of the same lands before John commenced his suit of which you have spoken, and therefore there cannot be understood to be any such collusion on our part as that which you have supposed, and the Court ought rather to suffer your execution to be delayed until our suit is tried than award you execution contrary to your own deed.—*Grene*. In case I bring a writ against you, in respect of certain tenements when I have released my right before the purchase of the writ, and you allow me to recover, you will never be aided by that release

No. 24.

pernez a ore, par quei nient le plus semble il qe ^{A.D. 1343.} vous ne serrez; par quei jugement.—*Moub.*¹ A cesty Johan qe vous supposes qe fist la suyte nous sumes tout estrange; ove ceo, vous dioms qe, long temps devant ceste suyte par Johan comence, nous fumes tenant de mesme la terre, issint qe par son noun-suyte nostre franctenement ne deit par estre perdu; par quei, del houre qe vous ne responses rien a vostre fait quel avoms mis avant, jugement coment nous departiroms.—*W. Thorpe.* Vostre bref ne fait pas mencion de ceo qe vous fuistes tenant avant ceo qe Johan comencea cele suyte; par quei la ley deit plus cest entendre qe vous avenustes a la tenance puis cele suyte qe devant; et, si ceo bref soit meyntenu, jammes avera homme execucion hors dun statut marchant, qar celui qe fist la reconisaunce prendra tiele suyte, et quant il ad mene la suyte a la fine donques il soy demettra a un autre, et apres serra nounsuy, et lautre apres prendra autiele suyte, et ferra en mesme la manere, et *sic in infinitum*; par quei nentendoms pas qe cest bref poet estre meyntenu countre ceo qe nous avoms dit.—*Moub.*¹ Auxi nous ne sumes cy en le cas ou vous aves mis, qar nous voloms averer qe nous fumes tenant de franctenement de mesmes les terres avant ceo qe J. comencea sa suyte de quele vous avez parle, par quei tiele collusion ne poet pas estre entendu de nostre part come vous avez mis, et plustost deit la Court seoffrer qe vostre execucion soit delaye tanqe nostre suyte soit trie qe de vous agarder execucion encountre vostre fait demene.—*Grene.* En cas qe jeo porte un bref vers vous de certains tenements la ou jay relese mon dreit devant le bref purchace, et vous soeffres qe jeo recovere, jammes ne serres vous eide par cel relees

¹ Old editions, *Momb.*

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A.D. 1848. because you might have pleaded it against me; but in case I release my right to you after plea, or after judgment rendered, if I sue execution contrary to my own deed, you will have Assise, and therefore also you will have it in this case; wherefore, &c.—*Blaykeston*. I shall never have Assise in the case in which we are, because all the lands which were J. Somery's, on the day of the recognisance, are charged for execution, and then of whatsoever the Sheriff effects execution he does so with warrant, and therefore he cannot be called a disseisor; and this suit is ordained by Parliament because I cannot have a recovery at common law in the case in which we are; wherefore we pray that you maintain it.

Assise of
Novel
Disseisin
in which
the Assise
had been
insuffici-
ently
examined
on one
point;

(25.) § Geoffrey de Cotes brought an Assise of Novel Disseisin against R. son of H. de Byngham,¹ and several others, before Basset and his fellows at York.—R. as tenant pleaded by bailiff to the Assise, by which it was found that one William de Byngham was seised, and leased the tenements to one Margery

¹ As to the parties, &c., see p. 387, note 2.

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pur ceo qe vous purres aver plede devers moy; A.D. 1343.
mes en cas qe jeo relesse a vous dreit apres plee,
ou apres jugement rendu, si jeo sue execucion countre
mon fait demene, vous averez Assise, par quei auxi
vous averez icy; par quei, &c.—*Blaik.* Assise navera
jeo jammes en le cas qe nous sumes, qar tous les
terres qe fuerent a J. Somery,¹ -jour de la reconi-
saunce, sont charges a execucion, donques de ceo qe
le Vicounte fait execucion il le fait par garraunt,
par quei il ne poet estre dit disseisour; et pur ceo
qe jeo ne puis aver recoverer a la comune ley en
le cas ou nous sumes ceste suyte est ordeine
par Parlement; par quei nous prioms qe vous la
meyntenes, &c.

(25.)² § Geoffrey Cotes porta Assise de Novele Assise de³
Disseisine vers R. fitz H. de Byngham, et plusours Novele
autres, [devant Basset et ses compaignouns a Disseisine,
Everwyke].⁴—R. come tenaunt par baillif pleda al ou ceo fuit
Assise, par quele fut trove qun W. de Byngham meyns
fut seisi, et lessa les tenements a une Margerie⁵ a bien
examine
en un
point;

¹ The name is from the record, as before.

² From L., Harl., 22,552, and 25,184, but corrected by the Assise Roll numbered in the Public Record Office, 1127, containing Assises heard before Basset and others Justices of Assise in the County of York, from the 16th to the 22nd year of Edward III. The skins of this roll appear to have been sewn together recently, and are not in chronological order, but the case clearly belongs to the 17th year, though following some of the 19th. The action was brought by Geoffrey de Cotes against Helewisia late wife of John son of Henry de Byngham, Elena daughter of John son of Henry de

Byngham, John Warde, and several others, in respect of two messuages thirty acres of land and six acres of meadow in Luttrington.

None of the defendants appeared, but one William de Aberforde answered for them as their bailiff, and a special plea was pleaded on behalf of Elena as tenant of two parts of the tenements put in view, on which issue was joined to the Assise.

³ The words Assise de are omitted from 25,184, but the rest of the marginal note is from that MS. alone.

⁴ The words between brackets are omitted from 22,552.

⁵ 25,184, Margle.

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A.D. 1343. for term of her life. William died, Margery aliened but, in order to make that good, a Bishop's certificate was produced, *sub pede sigilli*, proving the point in respect of which there was a defect through insufficient enquiry; and therefore seisin was awarded.

in fee to A.¹ and B.¹ and after Margery's death one John de Byngham, as heir of William the lessor, brought a writ of Entry *in consimili casu*, and recovered by default, and was seised for one month, and afterwards enfeoffed Geoffrey the plaintiff, who was seised for four days, on whose possession J. de Byngham,¹ as issue of the brother of William the lessor, entered as William's cousin and heir.—And it was enquired whether J. was of full age at the time at which the writ *in consimili casu* was brought, and also at the time of

¹ As to the names mentioned in the verdict, see p. 389, note 3.

No. 25.

terme de sa vie. William morust, Margerie¹ aliena A.D. 1343.
 en fee a A. et B., et apres la mort M. un J. de Byngham, come heir W. le lessour,² porta bref
 Dentre *in consimili casu*, et recoveri par default, et fut seisi par un mois, et apres feffa G. qe se pleint,
 qe seisi fut par iiij jours, sur qi possessioun J. de Byngham, come issu del frere W. le lessour,² entra
 come cosyn et heir a W.³—Et fut enquis si J. fut de plein age al temps quant le bref *in consimili casu* fut porte, et auxi al temps del entre, qe

mes,
 affaire gre
 a cel, certi-
 ficacioun
 Devesqe
 fuit
 mustre,
 sub pede
 sigilli,
 provant
 le point en
 quel y
 avoit
 default del

¹ 25,184, Margle.

² 25,184, feffour.

"The verdict of the Assise was
 "quod quidam Willelmus de
 "Byngham fuit seisis de tene-
 "mentis in visu positus in
 "dominico suo ut de feodo et
 "jure, et eadem tenementa dimisit
 "cuidam Margerie de Byngham
 "habenda et tenenda ad ter-
 "minum vite ipsius Margerie,
 "salvando reversionem eorundem
 "tenementorum eidem Willelmo
 "et heredibus suis cum acciderit.
 "Et dicunt quod prædicta Mar-
 "geria alienavit prædicta tene-
 "menta quibusdam Johanni
 "Warde et Constancie uxori
 "ejus, Willelmo Tebaud et Con-
 "stancie uxori ejus, Willelmo
 "filio Rogeri de Roseles, et
 "Katerine filie Henrici de
 "Byngham, in feodo, virtute
 "cujus alienationis quidam Jo-
 "hannes de Byngham tulit
 "quoddam breve in consimili
 "casu coram Justiciariis domini
 "Regis de Banco apud Eboracum
 "in Octabis Sancte Trinitatis
 "anno Regis nunc decimo versus
 "prædictos Johannem Warde et
 "alios, clamando se heredem
 "ipsius Willelmi, qui quidem

"Johannes Warde et alii ad
 "tunc fuerunt tenentes prædic-
 "torum tenementorum, et eadem
 "tenementa cum pertinentiis
 "versus ipsos recuperavit, virtute
 "cujus judicii quidam Thomas
 "Calvehirde assignatus fuit per
 "Vicecomitem Eboraci ad de-
 "liberandum seisinam eorundem
 "tenementorum eidem Johanni
 "de Byngham; et idem Thomas
 "liberavit ei seisinam de tene-
 "mentis prædictis; et idem Jo-
 "hannes de Byngham seisis
 "de prædictis tenementis per
 "unum mensem post liberationem
 "seisinæ ei sic factam feoffavit
 "ipsum Galfridum de Cotes, qui
 "nunc queritur, tenendis sibi et
 "heredibus suis in perpetuum,
 "qui quidem Galfridus fuit
 "seisis de prædictis tenementis
 "per quatuor dies virtute feoffa-
 "menti prædicti, super quem
 "quidam Johannes filius Henrici
 "de Byngham, clamando se esse
 "propinquiorem heredem ipsius
 "Willelmi de Byngham, intravit
 "super ipsum Galfridum et ipsum
 "de tenementis illis simul cum
 "prædictis Helewisia, Elena,
 "[and the others,] amovit."

mes
 seisine
 fut agarde.
 [Fitz.,
 Assise,
 209, Certi-
 ficat, 4;
 17 Li.,
 Ass., 8.]

No. 25.

A.D. 1843. the entry, and the Assise said "Yes."¹—*R. Thorpe*. It is found by verdict that the plaintiff was seised by very title; judgment.—*W. Thorpe*. The Assise has been insufficiently examined, for it has not been enquired whether John be the son of William the lessor, or not, whereas, if the Assise had been examined upon that point, they would possibly have said that he is not William's son, or possibly that he was born before marriage, and if that had been found by verdict, even though he had recovered the land, his possession would be only an abatement on the right of the very heir, and continuance of that possession would not oust

¹ For the questions put to the Assise, and answered, see p. 391, note 1.

No. 25.

dissent quil.¹—*R. Thorpe.* Il est trove par verdit qe A.D. 1348.
 le pleintif fut seisi par verrey title; jugement.—
 [*W.*] *Thorpe.* Lassise est meynz bien examine, qar
 il nest pas enquis si Johan soit fitz a W. le lessour,²
 ou noun, ou par cas si lassise ust este examine sur
 cel ils dirreint qil nest par son fitz, ou qil nasquist
 par cas avant³ les esposailles, et si⁴ ceo fut⁵ trove
 par verdit, tut ust il recoveri la terre, sa possession
 ne serreit forsqe abatre⁶ en le dreit⁷ le verrey⁸
 heir, et continuaunce de cele possession ne oustereit

¹ According to the record "Jura-
 "tores quæsi si prædictus Jo-
 "hannes filius Henrici fuit plenæ
 "ætatis, necne, tempore quo
 "prædicta Margeria alienavit
 "prædicta tenementa eisdem Jo-
 "hanni Warde et aliis, &c.,
 "qui dicunt quod tempore aliena-
 "tionis prædictæ idem Johannes
 "filius Henrici fuit infra ætatem.
 "Quæsi si idem Johannes filius
 "Henrici fuit plenæ ætatis
 "tempore quo idem Johannes
 "de Byngham recuperavit præ-
 "dicta tenementa versus ipsos
 "Johannem Warde et alios qui
 "dicunt quod tempore recupera-
 "tionis prædictæ idem Johannes
 "filius Henrici fuit plenæ ætatis.
 "Quæsi si prædictus Johannes
 "filius Henrici commorabatur in
 "prædicta villa de Lutryngtone
 "tempore recuperationis prædictæ
 "qui dicunt quod idem Johannes
 "filius Henrici tempore recupera-
 "tionis prædictæ commorabatur in
 "prædicta villa. Quæsi cujus
 "ætatis idem Johannes filius
 "Henrici fuit tempore quo in-
 "travit super ipsum Galfridum
 "dicunt quod fuit ætatis viginti
 "et duorum annorum et non
 "amplius. Quæsi ubi prædictus
 "Johannes filius Henrici commo-
 "ratur tempore alienationis

"factæ prædicto Galfrido de
 "Cotes de tenementis prædictis,
 "dicunt quod commorabatur in
 "eadem villa de Lutryngtone.
 "Quæsi si prædicta Margeria
 "tempore quo idem Johannes
 "filius Henrici intravit super
 "ipsum Galfridum fuit superstes,
 "necne, qui dicunt quod tem-
 "pore quo prædictus Johannes
 "filius Henrici intravit super
 "ipsum Galfridum prædicta Mar-
 "geria non fuit superstes. Quæsi
 "si omnes fuerunt ad disseisinam
 "faciendam, dicunt quod prædicti
 "Helewisia, Elena [and four
 "others] tantum fuerunt ad
 "disseisinam faciendam, &c.
 "Quæsi quæ damna si, &c.,
 "dicunt quod ad damnum ipsius
 "Galfridi decem librarum. Quæ-
 "si si disseisina facta fuit vi
 "et armis, necne, dicunt quod
 "[three, not including Helewisia
 "or Elena] vi et armis inter-
 "fuerunt ad disseisinam illam
 "faciendam."

² 25,184, feffour.

³ L., hors de.

⁴ si is omitted from L.

⁵ L., ust este.

⁶ 25,114, abatu.

⁷ L., sour, instead of en le dreit.

⁸ 22,552, vostre, instead of le
 verrey.

No. 25.

A.D. 1343. the very heir from entry upon him, nor consequently upon his assignee where the entry was fresh, as is found in this case; and since enquiry has not been made as to this matter, and since, moreover, when you examined the Assise whether J. was of full age, that was for the purpose of ascertaining whether he was heir or not heir, &c., we pray that the Assise be re-examined.—*Stouford*. There ought not to be a re-examination, except for defect of matter on which one ought to proceed to judgment; but it is found that the woman died before the action by writ *in consimili casu* was employed, or entry was made, so that the very heir was ousted from this action and from entry, so that, even though the cousin were very heir, he could not enter, and particularly upon one who holds by feoffment.—*W. Thorpe*. Even though he were ousted from entry upon those who were enfeoffed by the woman, nevertheless, if the bastard recovered against them, he would be adjudged to be, as between him and the mulier, in such possession as he would have been if he had entered after the death of his ancestor who died seised, so that his possession would be by law an occupation in the right of the mulier, from which the mulier or his assignee might freshly remove him.—*R. Thorpe*. I say that whenever any one's entry is once taken away from him by reason of the title which another has, even though another be tenant by disseisin afterwards, he cannot on that account enter.—*W. Thorpe*. Certainly he can do so.—And afterwards a Certificate, *sub pede sigilli*, was produced, which proved J. to be

No. 25.

pas le verrey heir qil nentrast sur luy, *nec per* A.D. 1343. *consequens* sur son assigne la ou lentre fut¹ fresche, come est trove en cel cas; et del houre qe ceste chose nest pas enquis, [et unqore, quant vous examinastes si J. fut de pleyne age, ceo fut a cel entente ou qil fut heir ou nyent² heir, &c.]³ nous prioms qe Lassise soit reexamine.⁴—*Stouf*. Ceo ne covient pas si ceo ne fut pur⁵ default de matere sur quei homme dust⁶ aler a jugement; mes il est trove qe la femme morust avant qe accion par bref *in consimili casu* fut use, ou entre fait, issint qe le verrey heir fut ouste de cele⁷ accion et dentrer, issint qe, tout fut le cosyn verrey heir, il ne pout entrer, et nomement⁸ sur celui qe tient par feffement.—[*IV.*] *Thorpe*. Mesqe il fut ouste dentrer sur les feffes par la femme, nepurquant, si le bastard recoverast vers eux, il serreit ajuge entre luy et le muliere,⁹ en autiel possession come sil ust entre apres la mort soun auncestre qe devia seisi, issint qe sa possession serra par¹⁰ ley une¹¹ occupacion en le dreit le muliere,⁹ de quei il le put remuer et soun assigne freschement.—*R. Thorpe*. Jeo die la¹² ou¹¹ lentre dun homme luy¹³ est tollet a un temps pur title qautre ad, tout soit un autre tenant par sa disseisine apres, il par taunt¹⁴ ne poet pas entrer.—[*IV.*] *Thorpe*. Certes¹⁵ si poet.—Et puis certificacion fut mys avant, *sub pede sigilli*, qe prova J.

¹ 22,552, and 25,184, est.

² For the words ou qil fut heir ou nyent, which are in L., there are substituted in the other MSS. the words pur ceo qil purra estre ou qil fut.

³ The words between brackets are omitted from 22,552.

⁴ L., and 25,184, examine.

⁵ L., sour.

⁶ The words homme dust are from L. alone.

⁷ L., del, instead of de cele.

⁸ 25,184, nota.

⁹ Harl., mulure.

¹⁰ L., de.

¹¹ 25,184, en.

¹² la is from L. alone.

¹³ luy is omitted from L.

¹⁴ The words par taunt are from L. alone.

¹⁵ Certes is omitted from 25,184.

No. 25.

A.D. 1343. mulier and the son of William.—BLAYKESTON. That which was wanting on examination is proved by record.—[*W.*] *Thorpe*. It is not, because we are a stranger to the record, and we can say, notwithstanding the Certificate, that he was born before marriage, and if that were found by the Assise he would take nothing.—BLAYKESTON. We agree in the opinion that you ought not to have any advantage contrary to the record.—And it was adjudged that the plaintiff should recover.

No. 25.

estre muliere¹ et fitz a William.²—BLAIK.³ Ceo qe A.D. 1343.
faut en examinement est prove par recorde.—[W.]
Thorpe. Noun est, qar nous sumes estraunge al
recorde, et poms dire,⁴ *non obstante* la Certificacion,
qil nasquist avant les esposailles, et si ceo fut trove
par Assise il prendra rien.—BLAIK. Entre nous
quidoms qe vous ne devez aver⁵ lavantage countre
le recorde.—Et agarde qe le pleintif recoverast.⁶

¹ Harl., mulure.

² The matter relating to this point appears upon the roll as follows:—After the verdict, and the replies of the jurors of the Assise to the questions put to them, there was an adjournment "coram eisdem Justiciariis apud Westmonasterium," where the parties appeared. The King thereupon sent (in consequence of a representation made by Geoffrey Cotes as to a previous action in the Common Bench, in which John son of William de Byngham, as William's son and heir, recovered against Roger Roseles his seisin of an acre of land in Luttrington) a *Mittimus*, with the tenour of the record of that action, to the Justices of Assise for their guidance. According to that record it was pleaded "quod prædictus Johannes nullius heres esse potest eo quod bastardus est." The question being referred to the Archbishop of York who "misit hie [into the Common Bench] certificationem coram eo captam per literas suas patentes quæ dicunt quod prædictus Johannes legitimus est, et non bastardus." It was after this that judgment was given in the Common Bench for John to recover.

³ BLAYKESTON is here acting as a judge, the Justices of Assise being William Basset, Thomas de Fenecotes, and Roger de Blaykestone.

⁴ L., dedire.

⁵ 22,552, and 25,184, ne quidoms pas qe vous averez, instead of quidoms qe vous ne devez aver.

⁶ Judgment was given by the Justices of Assise "quia, inspectis recordo et processu prædictis, et plene intellectis, videtur Curiam quod ex quo Johannes filius Willelmi, virtute certificationis prædictæ, seisinam suam de prædicta acra terræ versus prædictum Rogerum Roseles coram Justiciariis prædictis, ut filius et heres prædicti Willelmi, recuperavit, per quod prædictus Johannes filius Henrici, ipso Johanne filio Willelmi superstitite, consanguineum et heredem prædicti Willelmi de Byngham de jure se vere [dicere] non poterit, et compertum per assisam istam quod prædictus Galfridus fuit seisitus de tenementis in visu positus virtute feoffamenti ipsius Johannis filii Willelmi ut de libero tenemento suo quousque prædicti Helewisia, Elena" [and the others] "ipsum de tenementis illis [eje]cerunt ad damnum ipsius Galfridi decem

No. 26.

A.D. 1348. (26.) § Assise of Mort d'Ancestor before SHARDELOWE
 Assise of Mort d'Ancestor against several persons by different summonses; and by reason of a foreign voucher having been counterpleaded the whole was adjourned into the Bench. in the country by different summonses.—As to one summons the tenant vouched, and the voucher was counterpleaded by Statute,¹ on the ground that the vouchee, &c., had nothing. As to another the tenant prayed aid. And as to the third the tenant vouched in a foreign county, which voucher was counterpleaded.—And the Assise could not be taken by parcels, and therefore the whole was adjourned into the Bench. And there the one who had previously prayed aid made default; and therefore the Assise was awarded against him. And as to the one who vouched in a foreign county, he was warranted, and the warrantor vouched over. His vouchee came and demanded what he had to bind him to warranty. And *profert* was made of the deed of his ancestor bearing date in the same county as that in which the Assise was brought. And the vouchee denied it; and upon that they were at issue.—*Grene*. Now all the issues are to be tried by the Assise in the same county, for one is to the Assise at large, the second is on the seisin of the vouchee, which shall be tried by the Assise, and the third is on the deed denied, which bears date in the same county, and that must be tried there.—SHARDELOWE. You know well that an assise shall not be taken by parcels, and this issue on the deed denied is out of point of assise, and is to be tried by a jury, and neither the demandant nor yet the tenant are parties to it, and therefore that inquest shall be taken first, and tried in this Court.

¹ 3 Edw. I. (Westm. 1), c. 40.

No. 26.

(26.)¹ § Assise de Mort dauncestre devant SCHARD. A.D. 1843.
 en pays par divers somons.—Quant² a un somons le tenaunt voucha, qe fut countreplede par statut, pur ceo qe le vouche, &c., navoit riens. Quant⁴ a un autre le tenant pria eide. Et quant al tierce le tenant voucha en forein counte, quel voucher fut⁵ countreplede.—Et Lassise ne put estre pris par parcelles, par quei tout⁶ fut ajourne en Baunk, ou celui qe avant pria eide⁷ fist default; par quei vers luy Lassise fut agarde. Et quant al autre qe voucha en forein counte, il fut garranti, et le garrantour voucha outre. Le vouche vint et demanda ceo qil avoit de luy lier al garrantie.⁸ Et le fait soun ancestre portaunt⁹ date en mesme le counte [ou Lassise fut porte, fut mys avaunt. Et le vouche le dedit, sur quei ils fuerent a issue.—*Grenc.* Ore sount touz les issues a trier par Assise en mesme le counte],¹⁰ qar un est al Assise a large, un autre est a issue sur la seisine le vouche qe serra trie par Assise, le tierce sur¹¹ le fait dedit, qe porte date en mesme le counte, qe covient estre trie illoeqes.—SCHARD. Vous savez bien qe homme prendra pas assise par parcelles, et ceste issue sur le fait dedit¹² est hors de point dassise a trier par enquest, et le demandant ne le tenant nient le plus parties, par quei ceste enquest serra primes pris, et trie ceinz.

“librarum, ideo consideratum est
 “quod prædictus Galfridus recu-
 “peret inde seisinam [sua]m
 “per visum recognitorum Assisæ
 “prædictæ, et damna sua prædicta
 “per eosdem recognitores taxata.”

¹ From L., Harl., 22,552, and 25,184.

² The marginal note subsequent to the word dauncestre is from 25,184 alone.

³ Quant is omitted from L.

⁴ Harl., and 25,184, avant.

⁵ All the MSS. except 25,184, ne fut pas.

⁶ L., fut agarde qe tout.

⁷ Harl., en eide. For pria eide 22,552 has pleda en barre.

⁸ The words al garrantie are from L. alone.

⁹ L., qe porta.

¹⁰ The words between brackets are omitted from 22,552.

¹¹ 25,184, est.

¹² The words sur le fait dedit are omitted from L.

Assise de Mort
 daunces-
 tre vers
 plusours
 par divers
 somons;
 et par
 cause dune
 foreyn
 voucher
 countre-
 plede tut
 futajourne
 en Bank,
 &c.³
 [Fitz.,
 Mordaun-
 cestre, 5;
 17 Li.
 Ass., 9.]

No. 27.

A.D. 1343. —*Quære*, if the deed be found to be that of his ancestor, or the reverse, what will be done—will that make an end of the matter, as if it were a *Præcipe quod reddat*, or will the Assise be afterwards taken on the points of the writ?

Writ of
Entry
brought
by a Prior,
as Preben-
dary, in
the form
sine
assensu
Archiepis-
copi,
Decani, et
Capituli
Eboraci,
without
saying
anything
of his own
Chapter,
&c.

(27.) § Thomas, Prior of Hexham, Prebendary of the prebend of Salton in the church of St. Peter of York, brought a writ of Entry against B.,¹ supposing that he had not entry but after the lease which one J.,¹ formerly his predecessor, made of a manor¹ to Thomas,¹ &c., without the assent of the Archbishop, Dean, and Chapter of York.—*Moubray*. Judgment of this writ of Entry, because a *Jurata utrum* would serve his purpose.—And afterwards he passed on, and said that the Prior brought this writ as in right of his Priory, and as Prebendary in right of his Priory, and supposed only alienation

¹ For the names, &c., see p. 399, note 5.

No. 27.

—*Quære*,¹ si trove soit le fait son auncestre *vel e* A.D. 1343. *converso*, quei serra fait, le quel ceo fra² fyn, auxi come ceo fut un³ *Præcipe quod reddat*, ou Lassise serra apres⁴ pris sur les points de bref?

(27.)⁵ § Thomas, Priour⁷ de Extildesham, Pro-
vandr del provandre⁸ de Saltone en leglise de Seint
Piere de Everwyke, porta bref Dentre vers B.,
supposaut qil navoit entre sinoun puis le lees qun
J., jadis soun⁹ predecessour, de ceo en fit a Thomas,
&c., sans assent Lercevesqe, Dean, et Chapitre de
Everwyke:—*Moubray*. Jugement de ceo bref Dentre,
qar *Jurata de utrum* luy servireit.—Et puis passa, et
dit qe le Priour porta ceo bref come del droit de
sa Priorie, et come Provandr [el droit de sa
Priorie, et ad suppose seulement lalienacion sanz

Bref
Dentre par
un Priour
porte come
Provandr
drer sine
assensu
Archiepiscopi,
Decani, et
Capituli
Eboraci,
sanz rien
parler de
soun
Chapitre
demene,
&c.⁶
[Fitz.,
Briefe,
666.]

¹ L., et.

² 22,552, fuist.

³ L., en.

⁴ apres is from 25,184 alone.

⁵ From L., Harl., and 25184, but corrected by the record *Placita de Banco*, Easter 17 Edw. III. R^o 327, d. The form of the writ may be inferred from the commencing words:—"Thomas Prior de Hex-
tildesham, Præbendarius præ-
bendæ de Saltone in ecclesia
beati Petri, Eboraci,
petit versus Ricardum de Houe-
dene, capellanum, quem Johanna
uxor Thomæ filii Willelmi de
Thorntone, quæ per defaultam
ipsius Thomæ admissa est ad
defensionem juris sui, vocat
ad warrantizandum, et qui ei
warrantizat, medietatem manerii
de Neutone juxta Nonyntone,
cum pertinentiis, et versus
Petrum Nellesone de Munkeby,
quem prædicta Johanna, quæ

"per defaultam prædicti viri sui
admissa est ad defensionem
juris sui, vocat ad warrantiz-
andum, et qui ei warrantizat,
medietatem manerii prædicti,
cum pertinentiis, ut jus præ-
bendæ suæ prædictæ, et in quod
manerium iidem Thomas filius
Willelmi et Johanna non habent
ingressum nisi post dimissionem
quam Johannes de Biwelle,
quondam Prior de Hextildesham,
Præbendarius præbendæ præ-
dictæ, prædecessor prædicti
Prioris, sine assensu et volun-
tate Archiepiscopi Eboracensis
et Decani et Capituli ecclesiæ
beati Petri Eboraci, inde fecit
Johanni de Neutone."

⁶ The marginal note subsequent to Dentre is from 25,184 alone.

⁷ Priour is omitted from L.

⁸ The words del provandre are omitted from 25,184.

⁹ soun is omitted from L.

No. 27.

A.D. 1243. without the assent of the Archbishop, Dean, and Chapter of York, and not of his own Chapter, without whose assent the alienation could not be good; and we tell you (said *Moubray*) that the Prior holds the prebend to him and his successors.—*W. Thorpe*. Inasmuch as he is Prebendary he holds in the right of the Chapter of the church of which he is Prebendary, and no other, and that is the church of York, for, if any person other than the Prior were Prebendary, he, with the assent of the Chapter of York, would be able to aliene it, and for the same reason the Prior who holds it as Prebendary.—*Moubray*. When the prebend was amortised, it was so to hold in right of the Priory, and he holds it as Prior, of his own patronage, and that which is the right of his Priory cannot be aliened without the assent of his own Convent; consequently the omission of his own Convent abates the writ.—*W. Thorpe*. Then would he have a writ *Sine assensu Capituli*?—*R. Thorpe*. Yes, if he were to have any.—*SHARDELOWE*. Suppose his own Convent assented, and not the Chapter of York, would not this writ be good?—*Grene*. No, Sir, for suppose, on the other hand, that the Convent did not assent, but the Dean and Chapter of York did assent, still the alienation would not be good, and the law is that by the writ the alienation shall be supposed to be without the assent of those whose assent could confirm the alienation, and that is the assent of both Chapters, and consequently this

No. 27.

assent del Ercevesqe, Dean, et Chapitre¹ de Everwyke, A.D. 1848. et noun pas de son Chapitre¹ demene, sanz qi assent lalienacion ne put estre bone²; et vous dioms qe le Priour tient le provandre]³ a luy et ses successeurs.—[W.] Thorpe. En⁴ taunt⁵ come il est Provandrer il tient en le dreit le Chapitre¹ del⁶ eglise dount il est Provandrer, et nul autre, et cest leglise⁷ de Everwyke, qar, si autre homme fut Provandrer, il, del assent le Chapitre¹ de Everwyke, le purreit alier, par mesme la resoun le Priour qe le tint come Provandrer.—Moubray. Quant la provandre fut amorti, ceo fut a tener en le dreit la Priorie, et il come Priour le tient de⁸ savowere demene, et ceo qest dreit de⁹ sa Priorie ne put estre aliene sanz assent de soun Covent¹⁰; *per consequens* lentrelessen de soun Covent abate le bref.—[W.] Thorpe. Donques avereit il bref *Sine assensu Capituli*¹¹?—R.¹² Thorpe. Oyl, sil avereit nul.—SCHARD. Jeo pose qe soun Covent demene fut de lassent, et noun pas le Chapitre de Everwyke, ne serreit pas ceo bref bon?—Grene. Noun, Sire,¹³ qar mettez arere meyn qils ne fuissent pas del assent, mes le Dean et le Chapitre de Everwyke, unqore lalienacion ne serreit¹⁴ pas bone, et la ley est qe par bref serra suppose lalienacion sanz assent de eux qi assent purreit affermer¹⁵ lalienacion, et cest de lun et lautre Chapitre,¹⁶ et *per consequens*¹⁷ ceo

¹ L., Chapistre.² L., fait boun.³ The words between brackets are omitted from 25,184.⁴ L., par.⁵ 25,184, quant.⁶ 25,184, et.⁷ L., cel eglise, instead of cest leglise.⁸ L., come.⁹ L., a.¹⁰ Harl., Covent demene.¹¹ 25,184, *Capitulorum*.¹² R. is omitted from L.¹³ Sire is omitted from L.¹⁴ L., serra.¹⁵ L., affermereit, instead of purreit affermer.¹⁶ Chapitre is omitted from L.¹⁷ 25,184, par queux, instead of *per consequens*.

No. 28.

A.D. 1343. writ is bad.—HILLARY. For anything that you have yet said, it seems to us that the writ is good.—*Moubray*. Again, judgment of the writ, for the words of the writ are *sine assensu Archiepiscopi, Decani, et Capituli*, by which words the right in the Archbishop and his Chapter is supposed to be one, whereas it is diverse and several; judgment.—*W. Thorpe*. Their right is supposed to be entirely in the right of one church, but we have nothing to do with the question whether it is several or common.—HILLARY. Say something more than that.—*R. Thorpe*. This is the first writ that has been heard in such a case, and therefore it should be well considered, and I know well that their right is several, so that neither shall meddle with the other.—*R. Thorpe* prayed that the exceptions on his side might be entered.—HILLARY. They shall be.—Afterwards *Moubray* vouched as to parcel, and, as to the rest, traversed the lease.—*Quere* whether this writ relating to different actions, and those of different natures, lies.

Scire facias on a fine on the render of rent. And note that the fine was engrossed, (28.) § William Coleworthe, son and heir of John Coleworthe, sued a *Scire facias* in respect of certain rent against William Waltham and others, upon a fine, supposing by the writ that John Coleworthe, who was a party to the fine had not had execution.—*Moubray*. You see that this fine, by which this writ is warranted,

No. 28.

bref est¹ malveis.²—HILL. Pur rien qe vous avez A D. 1343
 unqore³ dit, nous semble le bref bon.—*Moubray*.
 Unqore jugement du bref, qar le bref voet *sine*
assensu Archiepiscopi, Decani, et Capituli, par queles
 paroles le dreit en Lercevesqe et soun Chapitre⁴
 est suppose estre un, ou cest divers et several;
 jugement.⁵—[*W.*] *Thorpe*. Lour dreit est suppose
 tout en le dreit dune eglise, mes le quel several ou
 en comune nous navoms qe faire.—HILL. Dites
 outre.—[*R.*] *Thorpe*. Cest le primer bref qe homme
 ad oy en le cas, et pur ceo fait bien davisier, et
 jeo say bien qe lour dreit est several, qe nul se
 medle ovesqe⁶ autre.—[*R.*] *Thorpe*⁷ pria qe ses
 chalaunges fuissent⁸ entres.—HILL. Si serrount.—
 Puis *Moubray* de parcelle voucha, et del remenant
 traversa le lees.—*Quere* si ceo bref de divers accions
 et divers natures igise.⁹

(28.)¹⁰ § William Coleworthe,¹¹ fitz et heir Johan *Scire*
 Coleworthe, suist *Scire facias* de certain¹² rente vers hors dune
 William Waltham et autres, hors dun fyn, supposant¹³ fine sur le
 par le bref qe Johan Coleworthe¹¹ qe fut partie a rendre de
 la fyn navoit pas execucion.—*Moubray*. Vous veiez *Et nota la*
 coment¹⁴ ceo fyn, dount ceo bref est garranti, est engrosse,

¹ est is from Harl. alone.

² 25,184, moyns.

³ unqore is from L. alone.

⁴ L., Capistre.

⁵ L., &c.

⁶ 25,184, entre.

⁷ The conclusion of the report beginning with the word *Thorpe* occurs in its proper place in Harl. alone. It is altogether omitted from L. In 25,184 it is placed (as in the old printed editions) at the end of No. 30, next below, but with a marginal note to show that it is the "*Residuum* de bref dentre."

and with a reference to the place.

⁸ 25,184, furent.

⁹ The exceptions to the writ are not mentioned in the record. It was, no doubt, held to be good, as there were several vouchers over, and the demise by John de Biwell was traversed, and issue joined thereon.

¹⁰ From L., Harl., and 25,184.

¹¹ L., Colaworthi; Harl., Colle worthe.

¹² certain is omitted from L.

¹³ L., et supposa.

¹⁴ L., bien.

No. 28.

A.D. 1343. is engrossed, and came out of the Treasury, and a fine of rent shall never be engrossed until it be put and came out of the Treasury, in execution, so by the fine it is supposed that the Treasury, and was so rent is put in execution in his ancestor, and by the proved by writ the reverse is supposed; judgment of the writ.—*Derworthy*. Of a fee tail, even though the fine be executed, for which reason exception was now taken to this writ, &c. *Quare*. to *Pole*. Do you hold the opinion that a fine *sur render* shall never be engrossed before it is executed?—*Pole*. Yes, certainly, for if the party sued within the year, at his peril, that the fine should be engrossed, he would never afterwards have a writ of seisin even within the year, nor consequently would he have a *Scire facias* after the year, for as soon as ever it is engrossed it shall be sent into the Treasury, and particularly a fine of rent.—*SHARSHULLE*. You shall never have execution out of this Court in respect of rent which is rendered, for the Sheriff cannot put in execution that which you cannot yourself deliver at the inn; but rent cannot be delivered without the assent of the tenant, and therefore the words *quem redditum reddit* are used.—*SHARDELOWE*. No other render than that of a rent charge shall be had by fine, and the Sheriff shall effect execution. And, if I recover against you by a writ of Customs and Services, what execution shall I have? as meaning to say by Distress.—*SHARSHULLE*. That was the old law.—

No. 28.

engrosse, et vint hors de la Tresorie, et de rente A.D. 1343.
 fyn ne serra jammes engrosse tanqele soit mys en et vint
 execucion, issint par la fyn est suppose¹ la rente hors de la
 estre² mys en execucion en souu auncestre, et par Tressorie,
 bref le revers est⁴ suppose; jugement de bref.— issi prove
Derworthi. De fee taille, tout soit fyn execut en ly mesme,
 launcestre; leir, a lentent dascuns gents⁵ avera de qi ceo
 execucion, mes de fee simple jammes. Et nous bref
 demandoms execucion de fee simple, par quei lour chalenge
 plee est a nostre⁶ accion.—SCHAR. a Pole. Estes ore &c.
 vous de⁷ cel entent qe fyn sur rendre ne serra pas Quere.³
 engrosse devant qele soit execut.—Pole. Si,⁸ certes, [Fitz.,
 qar⁹ si la¹⁰ partie suyst deinz lan qe la fyn soit Scire
 engrosse, a son peril, jammes apres navera il bref facias, 8.]
 de seisine, tout soit il deinz lan, *nec per consequens*
 apres lan *Scire facias*, qar a plus toust qele est
 engrosse ele¹¹ serra maunde en Tresorie, et nome-
 ment de rente.—SCHAR. Jammes navez vous exe-
 cucion hors de ceste Court de rente¹² qest rendu,
 qar Vicounte ne poet mettre en execucion chose qe
 vous ne poies mesmes¹³ liverer a lostel; mes rente
 ne poet estre livere sanz assent de tenant, et pur
 ceo homme¹⁴ use le *quem*¹⁵ *redditum reddat*.—
 SCHARD. Jammes navera homme autre qe rendre de
 rente charge par fyn, et Vicounte fra execucion.
 Et, si jeo recovere vers vous par bref de Custumes
 et Services, quele execucion averay jeo? *quasi diceret*,
 par Destresse.—SCHAR. Ceo fut¹⁶ launcien dreit.—

¹ L., prove qe.² The marginal note subsequent to the word *facias* is from 25,184 alone.³ L., est.⁴ est is from L. alone.⁵ gents is omitted from L.⁶ L., al, instead of a nostre.⁷ L., a.⁸ All the MSS. except L., Noun.⁹ qar is omitted from 25,184.¹⁰ la is from L. alone.¹¹ L., il.¹² The words de rente are omitted from L.¹³ L., pas.¹⁴ homme is omitted from L.¹⁵ L., *quod non*, instead of *quem*.¹⁶ Harl., and 25,184, fait.

No. 28.

A.D. 1343. SHARDELOWE. One has a like right through render.—SHARSHULLE. He has nothing by render until the tenant be willing to pay.—*Pole*. When I bring a writ of Covenant against you in respect of 20s. of rent, we shall levy a fine between us according to our choice, either by grant of the homage and services of such a person—and that requires execution by *Per quæ servitia*—or else we shall levy it *sur render*—and that requires execution in another way. But, if it be levied *sur grant* of services, it shall never be engrossed until the tenant have attorned or else until the person to whom the grant is made say, at his peril, that the attornment is made; and that is in lieu of execution, and the same method holds good with respect to rent charge, viz., that the fine shall never be engrossed until the party have execution by the Sheriff, or on his own statement at his peril.—And afterwards, as to parcel, the tenant alleged non-tenure, and, as to parcel, joint tenancy, and as to the rest he said that those whom the plaintiff supposed to have rendered the rent were long before seised of the demesne together with another, and rendered to W. Waltham's ancestor, and that estate is continued in him, so that none of the parties to the fine had anything in the rent; judgment whether execution, &c.—*Thorpe*. He who rendered was seised of the rent on the day on which the fine was levied; ready, &c.—And the other side said the contrary.—And as to the rest the demandant maintained his writ.

No. 28.

SCHARD.¹ Auxi² ad homme droit par le rendre.—A.D. 1343.
 [SCHAR. Il nad rien par le rendre]³ tanqe le tenant
 voille paier.⁴—Pole.⁵ Quant jeo porte bref de
 Covenant vers vous de xxs. de rente, nous leveroms
 une fyn entre nous, le⁶ quel nous voloms par⁷
 graunt del homage et services un tiel, et ceo de-
 mande execucion par le Per⁸ *quæ servitia*, ou autre-
 ment nous le⁹ leveroms sur rendre, et ceo demande
 execucion par autre voie. Mes, si ele soit leve sur
 graunt des services, ja ne serra ele engrosse tanqe
 le tenaunt soit attourne, ou autrement qe celui a qi le
 graunt est fait¹⁰ die, a son peril, qe lattournement
 est fait¹¹; et cest en lieu dexecucion, et par mesme
 la manere est de rente charge, qe¹² la¹³ fine ne
 serra pas engrosse tanqe la partie eit execucion par
 Vicounte¹⁴ ou par sa conissaunce a soun peril.—Et
 puis, quant a parcelle, le tenaunt¹⁵ alleggea noun-
 tenure,¹⁶ et de parcelle joint¹⁷ tenaunce, et del
 remenant il dit qe ceux queux le pleintif suppose
 qe renderent la rente longe temps devant ils furent
 seisiz del demene ensemblement ove un a autre, et
 renderent al auncestre W. Waltham, et cel estat est
 continue en luy, issint qe nul des parties a la fyn
 avoit¹⁸ rien en la rente; jugement si execucion, &c.
 —Thorpe. Celuy qe rendist fut seisi de la rente jour
 de la fyn leve; prest, &c.—*Et alii e contra*.¹⁹—Et
 quant al remenant le demandant²⁰ meintynt son bref.

¹ L., et.² auxi is omitted from 25,184.³ The words between brackets are omitted from L., and 25,184.⁴ paier is omitted from L.⁵ All the MSS. except 25,184, Thorpe.⁶ L., par.⁷ L., qe par.⁸ Per is from Harl. alone.⁹ le is omitted from L.¹⁰ L., se fist, instead of est fait.¹¹ L., qil ad attournement, in-

stead of qe lattournement est fait.

¹² 25,184, par.¹³ L., quel, instead of qe la.¹⁴ The words par Vicounte are omitted from Harl.¹⁵ 25,184, defendant.¹⁶ Harl., nontenu; 25,184, noun-tenue.¹⁷ 25,184, joint.¹⁸ Harl., navoit.¹⁹ The words *ut supra* are added in Harl., and 25,184.²⁰ 25,184, tenant.

No. 29.

A.D. 1343. (29.) § William Corbet and Emma his wife brought *Cui in vita*, a *Cui in vita* against one J.,¹ who came and rendered. where the tenant fraudulently rendered the demand, in order to cause executors to lose their term. Observe that the executors delayed execution because they showed the collu-
 —*Thorpe*. You have here A. and B.,² executors of the will of Alice, to whom these tenements were leased for term of her life (she being now dead) so that after her death the tenements should remain for a term of eight years to her executors, and it is now within the term, and after her death we as executors hold the term, and this action is brought by covin, to cause us to lose our term, for the demandant has no right because she never had anything except as wife, and we pray, in accordance with the Statute of Gloucester,³ that execution be not made.—*Stouford*. He is not a

¹ For the names see p. 409, note 1.

² For the names see p. 409, note 8.

³ 6 Edw. I. (Gloucester), c. 11.

No. 29.

(29.) ¹ § William Corbet et Emme² sa femme A.D. 1348.
 porterent *Cui in vita* vers un J. qe vint et rendist. *Cui in*
 —*Thorpe*. Vous avez ici A. et B. executours du *vita*, ou le
 testament Alice,³ a qi ceux tenements furent lesses tenant par
 a terme de sa vie, qest ore mort, issint qapres soun fraude
 decees les tenements remeyndreint a terme de viij rendist la
 aunz a ses executours, [et cest deinz le terme, et demande,
 apres son decees⁴ nous, come executours, tenoms le pur faire
 terme⁵],⁶ et ceste accion est mene par coveyne⁷ de *executours*
 nous faire perdre nostre terme, qar la demandante *perdre*
 nad pas dreit pur ceo qele navoit unques rien forsque *fourterme*.
 come femme, et prioms par Statut de Gloucestre *Vide qe les*
 qe execucion ne se face pas.⁸—*Stouy*. Il nest pas *executours*
 la collu- *targeront*
execucion
pur ceo
qils
mustrent

¹ From L., Harl., and 25,184, but corrected by the record *Placita de Banco*, Easter 17 Edw. III. R^o 344. It there appears that the action was brought by William Corbet, of Haddele (Hadleigh, Suffolk), and Emma his wife, against John son of John de Oddyngeseles, in respect of the manor of Cavendish (Suffolk), "quod clamant "tenere, ad vitam ipsius Emmæ, "ex dimissione quam Thomas de "Wassingle inde fecit eidem "Emmæ et Johanni de Oddingseles quondam viro suo et heredibus ipsius Johannis de Oddingseles, et in quod idem Johannes "filius Johannis non habet "ingressum nisi post dimissionem "quam prædictus Johannes quondam vir ipsius Emmæ "inde fecit Thomæ le Grey et "Alicie uxori ejus." The tenant appeared, and confessed the action.

² L., and Harl., M.

³ L., W.; Harl., M.; 25,184, D.

⁴ The words *apres son decees* are omitted from L.

⁵ L., *la terre*, instead of *le terme*.

⁶ The words between brackets are omitted from 25,184.

⁷ Harl., and 25,184, *consense*.

⁸ The appearance of the executors is thus entered on the roll:—
 "Et super hoc veniunt quidam
 "Johannes de Appale, Nicholas
 "de Brom, Philippus de Insula,
 "Robertus Giffard, et Johannes
 "de Bradefelde, executores testamenti
 "cujusdam Alicie quæ
 "fuit uxor Thomæ de Grei,
 "chivaler, proferendo hio quoddam
 "testamentum sub nomine
 "ipsius Alicie, quod hoc testatur,
 "et dicunt quod quidam Johannes
 "de Oddingeseles, chivaler, pater
 "prædicti Johannis filii Johannis,
 "cujus heres ipse est, dimisit
 "manerium prædictum præfatæ
 "Alicie tenendum ad terminum
 "vitæ ipsius Alicie, et concessit
 "quod executores seu assignati
 "ipsius Alicie tenerent manerium
 "illud per octo annos proximos
 "post obitum ipsius Alicie; et
 "proferunt hio quoddam scriptum
 "sub nomine prædicti Johannis
 "de Oddingseles quod hoc testa-

No. 29.

A.D. 1343. party to us, nor can we plead to him.—STONORE. You shall have judgment, but execution shall be suspended (and so he had according to the Statute¹) until enquiry be made as to collusion.—And afterwards *Stouford* came and said that after judgment has been entered on the roll, an averment is like an issue between the parties entered for the purpose of enquiring, &c., whereas (said *Stouford*) we neither pleaded nor could plead to him.—STONORE. Is not this given by Statute?—*Stouford*. If enquiry were made, it would be only an Inquest of Office, and the demandant did not join issue (and of that we take your records to witness) but had her judgment, and has gone out of Court.—*Thorpe*. On their part it was surmised, and shall be again, if you wish it, that she has not any right, and if he will not maintain that she has, we pray that it be held as not denied, and pray, on his non-denial, that execution be suspended.—STONORE. He stands firmly where he is.—*Stouford*. The demandant has gone, and has her judgment.—And afterwards it was entered on the roll *Respectuatur executio, quia Curia nondum adrisatur*.²—And the executors have a day, &c.

¹ 6 Edw. I. (Gloucester) c. 11.

² For the words actually entered on the roll see p. 411, note 12.

No. 29.

partie a nous, ne nous ne poms pleder a luy.¹—A.D. 1848.
 STON.³ Vous averez jugement, mes execucion serra
 suspendu, *et ita habuit* par statut, tanqe la collusion
 soit enquis.⁴—Et puis⁵ *Stouf.* vint et dit qapres le
 jugement entre en roulle un averement est auxi
 come a mise des parties entre denquere,⁶ &c., la ou
 unques ne pledames ne poams pleder a luy.—STON.
 Nest ceo done par statut?—*Stouf.* Sil serreit enquis
 ceo ne serreit forsqe doffice, et la demandante ne
 joyna⁷ pas la mise, et de ceo pernomms vos recordes,
 mes ad soun jugement, et est ale.—*Thorpe.* De
 part⁸ deux celuy fut sourmys, et unqore si vous
 voillez, serra, gele nad pas dreit, quele chose sil ne
 voille meintener, nous prioms qe ceo soit tenu a
 nient dedit, et prioms sur son nient dedire qe
 lexecucion soit suspendu.—STON. Il est come⁹ il est
 hardiment.¹⁰—*Stouf.* La demandante est ale, et ad
 son jugement.—Et puis en roulle est entre
Respectu-atur executio quia Curia nondum advisatur.—Et¹¹ les
 executours ount jour, &c.¹²

sion, et
 ovesqe
 traverser-
 ent le title
 le de-
 mandant.
Vide infra
Michaelis
*proximo.*³
[Fitz.,
Resceit,
105.]

"tur; et dicunt quod ipsi sunt
 "in possessione manerii illius
 "virtute concessionis prædictæ,
 "et quod septem anni adhuc sunt
 "futuri de termino prædicto, et
 "etiam quod prædicta Emma
 "nihil habuit in manerio prædicto
 "nisi ut uxor prædicti Johannis
 "de Oddingeseles, et quod prædicti
 "Willelmus et Emma tulerunt
 "breve prædictum versus præfatum
 "Johannem filium Johannis, et
 "ipsum implacitaverunt per
 "fraudem et collusionem inter
 "eos ad faciendum ipsos execu-
 "tores perdere terminum suum
 "prædictum, et hoc parati sunt
 "verificare, et petunt quod ipsi
 "per cognitionem prædicti Jo-
 "hannis filii Johannis sic per
 "fraudem et collusionem factam

"non amittant terminum suum
 "prædictum ex quo ipsi venerunt
 "ante judicium," &c.

¹ The words a luy are from
 Harl. alone.

² The marginal note subsequent
 to the word *Vita* is from 25,184 alone.

³ 25,184, *Stouf.*

⁴ 25,184, enquis et prove.

⁵ The words Et puis are omitted
 from 25,184.

⁶ L., denquerrer.

⁷ L., joynna; 25,184, yoina.

⁸ Harl., par. The words De part
 are omitted from L.

⁹ L., conu.

¹⁰ L., hardaunt; 25,184, harde-
 ment.

¹¹ Harl., and 25,184, Ad jour et.

¹² After the prayer of the executors
 the entry on the roll concludes as

No. 30.

A.D. 1343. (90.) § The Prior¹ of St. Augustine of Grimsby brought a writ of Intrusion against B.,² in respect of a lease made by W.² his predecessor to one A.,² for his life, into which the tenant has not entry but by abatement after the death, &c.—*Richemunde*. He cannot demand anything, for W.² his predecessor, with the assent of his Convent, by this deed, granted and gave the tene-ments to one A.² to have and to hold to him and his first son, or his first daughter, to be begotten, and bound himself and his successors to warrant to A.² and his first son or daughter, as above, and we tell you that we are the eldest son of A.² and so you are bound purchase.

¹ It was, in fact, the Abbot. See p 413, note 1.

² For the names see p. 413, note 1.

³ For the names see p. 415, note 1.

No. 30.

(30.) ¹ § Le Priour de Seynt Augustyn² de A.D. 1343.
 Grymesby porta bref Dentrusioun⁴ vers B. dun lees Intrusion.
 fait par W. soun predecessour a un A., a sa vie,⁵ Et credo
 en les queux il nad entre si noun par abatement qe ore fet
 apres la mort,⁶ &c.—*Richem.*⁷ Il ne poet rien de ne put
 demander, qar W. soun predecessour, del assent soun myo valer
 Covent, par ceo fait, graunta et dona a un A. les ne fut mye
 tenements a aver et a tener a luy et a soun primer en vie a
 fitz a engendrer,⁸ ou sa primere fille, et obligea luy temps de
 et ses successours⁹ a garrantir¹⁰ a A. et a soun la confec-
 primer fitz ou¹¹ fille, *ut supra*, et vous dioms qe cion du
 nous sumes fitz¹² eigne A., issint estes vous tenuz fet, qar
 [Fitz., par tant
 nest mie
 partie al
 purchace.²
 Feffements
 et Faits,
 60.]

follows:—“ Ideo consideratum est
 “ quod prædicti Willelmus et
 “ Emma recuperent inde seisinam
 “ suam versus prædictum Johan-
 “ nem filium Johannis, et idem
 “ Johannes in misericordia. Sed
 “ quia prædicti Willelmus et
 “ Emma ad hoc quod prædicti
 “ executores superius allegant
 “ et prætendunt verificare nihil
 “ dicunt nec respondent, cesset
 “ executio iudicii prædicti quousque
 “ videatur Curie quid ulterius
 “ fuerit inde faciendum.
 “ Et quia nondum visum est
 “ Curie quid &c., datus est dies
 “ prædictis executoribus hic in
 “ Octabis Michaelis. Et interim,
 “ &c. Ad quem diem venerunt
 “ prædicti executores et
 “ consideratum est quod executio
 “ prædicti iudicii cesset usque ad
 “ terminum prædictum plenarie
 “ completum.”

¹ From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter 17 Edw. III. R^o 351. It there appears that the action was brought by John, Abbot of Grimsby, against Richard son of William son of James de Swynflet

in respect of three parts of one messuage in Redenesse (Reedness, Yorkshire) as the right of his church of St. Augustine of Grimsby, “ in quas idem Ricardus non “ habet ingressum nisi per intru- “ sionem quam in illas fecit post “ mortem Willelmi filii Jacobi, “ cui Willelmus de Croxby quon- “ dam Abbas de Grymesby, præde- “ cessor prædicti Abbatis illas “ dimisit ad vitam ipsius Willelmi “ filii Jacobi,” &c.

² The marginal note, except the word Intrusion, is from 25,184 alone.

³ Harl., Austyn.

⁴ L., de Intrusioun.

⁵ The words a un A., a sa vie are omitted from 25,184.

⁶ 25,184, puis le lees, instead of par abatement apres la mort.

⁷ L., and Harl., *HILL*.

⁸ L., engendre, instead of a engendrer.

⁹ L., heirs.

¹⁰ The words a garrantir are omitted from L.

¹¹ Harl., une; 25,184, et.

¹² fitz is omitted from L.

No. 30.

A.D. 1343. to warrant to us; judgment.—*Moubray*. You see plainly that he does not make himself privy to this deed; judgment whether to this deed used by him the law puts us to answer.—*Thorpe, ad idem*. He does not use this deed as one who immediately took an estate by the gift, nor by way of remainder after A.'s¹ death, and so there is no certainty; judgment.—*Richemunde*. Since you do not deny this deed, judgment, &c.—*HILLARY*. He uses the deed in accordance with his matter.—*Moubray*. By the deed which he pleads in bar it is supposed that the gift was made to A.¹ and his first son or daughter, as above, and we tell you that B.,¹ who now pleads in bar, was not then *in rerum natura*, so that this deed which supposes a gift to the son of A.¹ was void with respect to the son; judgment whether he can bar us by this deed.—And so to judgment.

¹ For the names see p. 415, note 1.

No. 30.

a garrantir a nous; jugement.¹—*Moubray*. Vous A.D. 1343. veiez bien coment il se fait pas prive a ceo fait; jugement si a ceo fait use par luy ley nous mette a respoudre.—*Thorpe, ad idem*. Il ne use pas ceo fait come celuy qe immediate prist estat par le doun, ne par voie de remeindre apres le decees A., issint en² noun certain; jugement.—*Richem*. De puis³ qe vous ne deditez pas ceo fait,⁴ jugement, &c.—*HILL*. Il use le fait solonc⁵ sa matere.—*Moubray*. Par le fait quel il plede en barre est⁶ suppose le doun estre fait a luy et a son primer fitz ou fille, *ut supra*, et vous dioms qe B., qore plede en barre, ne fut pas adonques *in rerum natura*, issint qe ceo fait qe suppose doun al fitz A. fut voide en le fitz; jugement si par ceo fait nous puisse⁷ barrer.—*Et sic ad iudicium*.⁸

¹ The plea was, according to the roll, "quod prædictus Johannes Abbas nihil in prædictis tribus partibus prædicti mesuagii clamare potest, quia quidam Abbas de Grymesby, prædecessor &c., per assensum Conventus sui, concessit et dimisit prædictas tres partes prædicti mesuagii, per nomen cujusdam placeæ terræ sicut muro includitur, præfato Willelmo filio Jacobi, per quoddam scriptum indentatum, habendas et tenendas præfato Willelmo filio Jacobi et primogenito filio suo vel primogenitæ filiæ suæ de legitimo thoro procreatis. Et profert hic prædictum scriptum indentatum sub nomine ipsorum Abbatis et Conventus quod hoc testatur, virtute cujus concessionis et dimissionis prædictus Willelmus filius Jacobi fuit seisisus. Et dicit quod ipse est filius primogenitus prædicti

"Willelmi filii Jacobi, unde dicit quod si ipse ab aliquo extraneo de prædictis tenementis implacitaretur, idem Abbas, ut successor, &c., teneretur ei prædicta tenementa ut filio primogenito warrantizare, &c. Et petit iudicium si prædictus Abbas actionem habere debeat."

² en is omitted from 25,184.

³ L., Del hure, instead of De puis.

⁴ The words ceo fait are omitted from Harl.

⁵ L., sour.

⁶ The words plede en barre est are omitted from L.

⁷ L., puissez.

⁸ The replication, according to the roll, was "quod prædictus Ricardus ipsum ab actione sua virtute scripti prædicti præcludere non potest, quia dicit quod per prædictum scriptum supponitur quod prædictus Abbas prædecessor, &c., dedit, [et] concessit

No. 31.

A.D. 1343. (31.) § The King brought a *Quare impedit* against
Quare Baldwin de Fryville, in respect of the prebend of
impedit Wilnecote¹ in the Collegiate Church of Tamworth,
 for the King, who, by reason of the wardship of Ralph son and heir
 in his de- of Ralph le Botiler, who was under age, being in the
 clarification,

¹ The name is from the record. See p. 417, note 1.

No. 31.

(31.)¹ § Le Roy porta *Quare impedit* vers Baude- A.D. 1343.
wyn Fryville de la provandre de B. en leglise² *Quare*
collegial³ de Tamworthe⁴ par resoun de la garde *impedit*
Rauf fitz et heir Rauf Boteler⁵ deinz age en la *quen sa*
mustrance

"prædicto Willelmo filio Jacobi
"et primogenito filio suo seu
"primogenitæ filiæ suæ prædictæ
"tenementa, cum pertinentiis,
"habenda et tenenda prædicto
"Willelmo et primogenito filio
"suo, seu primogenitæ filiæ suæ.
"Et [Abbas] dicit quod tempore
"confectionis prædicti scripti
"prædictus Ricardus filius Wil-
"lelmi non fuit in rerum natura,
"et petit judicium si prædictus
"Ricardus virtute scripti, ex quo
"ipse non dedicit quin ipse
"tempore confectionis prædicti
"scripti non fuit in serum natura,
"ipsum ab actione sua præcludere
"possit, &c. Et petit seisinam
"terræ," &c.

To this, according to the roll,
there was the following rejoinder:—

"Ricardus dicit quod ex quo
"prædictus Abbas non dedicit
"prædictum scriptum esse factum
"prædicti Willelmi quondam
"Abbatis, prædecessoris, &c., per
"quod factum idem Abbas con-
"cessit et dimisit prædictas tres
"partes prædicti mesuagii per
"nomen unius placeæ terræ
"prædicto Willelmo et primo-
"genito filio suo, seu primogenitæ
"filiæ suæ, et obligavit ipsum et
"successores suos ad warrant-
"izandum prædicto Willelmo
"et primogenito filio suo, seu
"primogenitæ filiæ suæ, in forma
"prædicta, et idem Abbas non
"dedicit quin prædictus Ricardus
"est filius ipsius Willelmi primo-

"genitus, petit judicium si præ-
"dictus Abbas actionem versus
"ipsum habere debeat," &c.

After several adjournments judg-
ment was given as follows:—

"Quia prædictus Ricardus superius
"placitando expresse cognovit
"quod ipse tempore confectionis
"prædicti scripti non fuit in
"rerum natura, per quod scriptum
"illud in persona sua aliquem
"vim seu effectum capere posset,
"consideratum est quod idem
"Abbas recuperet inde seisinam
"suam versus ipsum Ricardum."
This was followed by the award of
a writ of enquiry of damages.

In the old editions of the Year
Books the conclusion of No. 27 is
wrongly printed at the end of this
case. The conclusion of this
report (No. 30) appears to be in
Mich. Term 18 Edw. III. No. 91.

¹ From L., Harl., and 25,184,
but corrected by the record, *Placita*
de Banco, Easter 17 Edw. III. R^o
413. It there appears that the
action was brought by the King
against Baldwin de Fryville, in re-
spect of a presentation to the prebend
of Wylmencote (Wilnecote) in the
church of St. Edith, Tamworth,
claimed by reason of the wardship
of the land and heir of Ralph le
Botiler, deceased, being in the
King's hand.

² 25,184, lesglise.

³ L., and Harl., colligial.

⁴ L., and Harl., Thamworthe.

⁵ 25,184, Butiler.

No. 31.

A.D. 1343. King's hand.—And he counted that Philip de Marmyon made a false descent to parceners, to wit, omitting one who was the defendant's ancestor. And note that, after exception taken by the party, the King amended his declaration, and was admitted to do this by judgment.

was seised and presented, and that from him the descent was to Joan, Joan, . Maud, and Joan, as daughters and heirs, and after Philip's death this advowson, among other lands, &c., was seized into the hand of the King the grandfather of the present King, and this advowson and other lands, &c., were assigned out of the Chancery to Mary, Philip's wife, to hold in the name of dower, in satisfaction, &c., which Mary leased her estate to Ralph Basset to him and to his heirs. From Ralph this estate in the advowson descended to Ralph Basset his son, who presented one C. ; then after the death of Mary the advowson, among other lands which had been Mary's, was seized into the hand of the King the father of the present King, wherefore the parceners sued the advowson, &c., out of the King's hand, and Joan the eldest died, and from her the right to her purparty descended to Joan, Maud, and Joan, as to sisters, which Joan, the middle parcener, took to husband B. Fryville,¹ Maud took to husband Ralph le Botiler, Joan the youngest took to husband Henry Hillary; then after the death of Ralph Basset's presentee a dispute arose between the parceners and their husbands with respect to the presentation; and therefore an agreement was accepted that B. Fryville¹ and his wife, and the heirs of his wife, because she was the eldest, and in accordance with common right, should present upon that voidance, and Botiler and the heirs of his wife

¹ See p. 423, note 9.

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mayn le Roy esteaunt.—Et counta qe Phelip² A.D. 1343.
 Marmyoun fut seisi et presenta, de qi descendi a fit un faux
 Johane, Johane,³ Maude,⁴ et Johane, come filles descent a
 et heirs, et apres la mort Phelip ceste avowesoun, parceners,
 entre autres terres, &c., fut seisi en la mayn le saver,
 Roy laiel,⁵ et hors de sa⁶ Chauncellerie ceste avowe- entreles-
 soun et autres terres, &c., furent assignes a Marie,⁷ fut aune-
 femme Phelip, a tener en noun de dowere, en cestre al
 allowaunce, &c., la quele Marie⁷ lessa son estat a defendant.
 Rauf⁸ Basset a luy et a ses heirs. De Rauf de- Et nota
 scendi cel estat del avowesoun⁹ a Rauf Basset son qapres la
 fitz, qe presenta un C.; dount apres la mort Marie⁷ chalange
 lavowesoun, entre autres terres qe furent a Marie,¹⁰ de partie
 furent seisi en la mayn le Roy pere le Roy,¹¹ par le Roi
 quei les parceners suerent hors de la mayn le Roy amenda sa
 lavoweson, &c., et Johane leignesse¹² morust, de qi mou-
 descendist le dreit de sa purpartie a Johane, Maude, straunce,
 et Johane, come a seours, la quele Johane, milvayne¹³ et a ceo
 se lessa esposer a B. Fryville, Maude se lessa faire fut
 esposer a Rauf Boteler, Johane la punesse se lessa resceu par
 esposer a Henre Hillari; dount apres la mort le agarde.¹⁴
 presente par¹⁴ Rauf Basset debat sourdist entre les [Fitz.,
 parceners et lour barouns del presentement; par Quare
 quei acorde se prist qe B. Fryville et sa femme, impedit,
 et les heirs la femme, pur ceo qe le fuit eignesne, 148.]
 et come comune dreit voet,¹⁵ presentereint a cele
 voidaunce, et Boteler et les heirs sa femme a la

¹ The marginal note subsequent to the word *impedit* is from 25,184 alone.

² L., Johane.

³ L., de Johane. The word is omitted from 25,184.

⁴ L., a Maude; 25,184, et Maude.

⁵ laiel is omitted from Harl.

⁶ L., la.

⁷ L., Margerie; 25,184, Margarete.

⁸ The words a Rauf are omitted from L.

⁹ The words del avowesoun are omitted from L.

¹⁰ L., M.; Harl., Margerie. The words furent a Marie are omitted from 25,184.

¹¹ L., &c., instead of le Roy.

¹² L., leigne; 25,184, leisnes.

¹³ L., mellvayne; Harl., melvayne.

¹⁴ par is omitted from L.

¹⁵ voet is omitted from L.

No. 31.

A.D. 1343. upon the second, and Hillary and his wife and the heirs of his wife upon the third turn, and so in succession, &c. Therefore Joan the wife of B. Fryville¹ and her husband presented Thomas de Blaston, who, on their presentation, was instituted by the Bishop, and through whose death the prebend is now void, so that it is now the second turn which belongs to Ralph, who is in the King's wardship (and he showed how) and so it belongs to the King to present.—*Moubray*. We do not admit the presentation, nor the composition, nor anything of which they speak, nor that there were such daughters; and we tell you that Philip had a daughter, M. by name, who is omitted in the descent; judgment of the declaration.—*Pole*. You do not show any right in her, nor what right there may be in her, or in any one who may be her issue, wherefore the law does not put us to answer to that; and suppose it were as you have said that M. of whom you speak did not enter into and was not party to the composition, I say that the King shall not make mention of her, nor of any other but those who were parties to the composition.—*KELSHULLE*. Will you say anything else as to the King's declaration?—*Moubray*. We tell you that Philip had issue one Mazera, who had issue Joan, and that Joan had issue Baldwin de Fryville, who is now living; and, if we had an estate through

¹ See page 423, note 9.

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seconde, et Hillari et sa femme et les heirs sa A.D. 1343.
 femme a la tierce tourne,¹ et issint entrechaunge-
 ablement, &c. Par quei Johane la femme B.² Fry-
 ville et son baroun³ presenterent⁴ Thomas Blastone,
 qe a lour presentement fut institut⁵ Devesqe, par qi
 mort la provandre est ore voide, issint est ore le
 seconde tourne qe affiert⁶ a Rauf qest en la garde
 le Roy, et moustra coment, et issint appent al Roy
 a presenter.—*Moubray*. Nous conissons pas le pre-
 sentement, ne la composicion, ne rien dount ils
 parlent, ne qe tieles filles y avoient; et vous dioms
 qe Phelip avoit une fille, M.⁷ par noun, qest entre-
 lesse en la descente; jugement de la moustraunce.⁸
 —*Pole*. Vous ne moustrez nul droit en cele,⁹ ne
 quel droit soit en luy,⁹ ne en¹⁰ nul qe¹¹ soit issue
 de luy, par quei a cella¹² ley ne nous¹³ mette a
 respoudre; et jeo pose qil fut issint come vous
 avez dit qe M.¹⁴ dount vous parlez unques nentra¹⁵
 ne partie fut a la composicion, jeo die qe le Roy
 ne fra pas mencion de luy,¹⁶ ne de nul autre forsque
 de ces qe furent parties a la composicion.—*Kels*.
 Voillez autre chose dire a la moustraunce le Roi?
 —*Moubray*. Nous vous dioms qe Phelip avoit issue
 une Mazare,¹⁷ de quele issit [Johane, de quele
 Johane issit]¹⁸ Baudewyn Fryville qest en pleyn
 vie; et si nous ussoms estat par my¹⁹ luy

¹ L., voidaunce.² The words Johane la femme B. are omitted from L.³ The words et son baroun are omitted from Harl.⁴ The words et son baroun presenterent are omitted from L.⁵ 25,184, resceu.⁶ L., afferrit.⁷ 25,184, Marg.⁸ L., demoustraunce.⁹ L., celuy.¹⁰ L., qe.¹¹ qe is omitted from L.¹² The words a cella are omitted from L.¹³ L., me, instead of ne nous.¹⁴ 25,184, Marere.¹⁵ nentra is omitted from Harl.¹⁶ The words de luy are omitted from L.¹⁷ 25,184, Marrere.¹⁸ The words between brackets are omitted from L.¹⁹ my is from L. alone.

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A.D. 1348. her, we could not plead upon this declaration; and, if we were the same person, we should possibly suffer disherison upon another turn by our present acceptance, if we were to accept this declaration, and therefore we understand that the King will not be answered as to such a declaration.—*Thorpe*. If we have described Joan as Philip's daughter, whereas she is possibly issue of Mazera who was Philip's daughter, so that Joan is cousin, which Joan was co-heir just as much as if she had been his daughter, and was a party to the composition, that does not change the matter, nor abate the King's declaration.—And afterwards *Thorpe gratis* amended the declaration in the descent, and said that from Philip issued Joan, who died without heir of her body, Mazera, Maud, and Joan; from Mazera, who died during Philip's life, issued Joan who was a party to the composition, &c., as above.—And note that he was admitted to amend the

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nous ne poms pas pleder sur ceste moustraunce; et A.D. 1348.
 si nous fuissoms mesme la persone nous serroms¹
 desherite a autre tourn,² par cas, par³ accepter a
 ore, si nous acceptames ceste moustraunce,⁴ par quei
 nous entendoms qe le Roi ne⁵ voille a tiel
 moustraunce estre respondu.—*Thorpe*. Si nous avoms
 nome Johane fille a Phelip, ou par cas ele est
 issue de Mazare,⁶ qe fut fille a Phelip, issint qe
 Johane est cosyn, quele Johane fut coheir si avant
 come sele ust este fille, et partie fut a la com-
 posicion, ceo ne change⁷ pas la matere, nabate la
 moustrance le Roi.—Et puis *Thorpe* de gre amenda
 la moustrance en la descente, et dit qe de Phelip
 isserent Johane, qe morust sanz heir de soi,
 Mazare,⁶ Maude, et Johane⁸; de Mazare,⁶ qe morust
 vivant Phelip, issit Johane qe fut partie a la com-
 posicion, &c., *ut supra*.⁹—*Et nota* qil fut reseu

¹ L., fuissoms.

² Harl., and 25,184, accion.

³ L., and Harl., pur.

⁴ L., demoustraunce.

⁵ ne is from 25,184 alone.

⁶ 25,184, Marrere.

⁷ 25,184, charge.

⁸ The words et Johane are repeated in 25,184.

⁹ According to the roll the declaration as accepted was that Philip de Marmyon was seised, and presented, that because one Mazera, one of his daughters, died during his lifetime, the advowson descended to Joan his daughter, Joan daughter of Mazera, and Matilda and Joan, Philip's other daughters, as his heirs. From Joan his eldest daughter, because she died without heir of her body, her purparty descended to Joan daughter of Mazera, and to Matilda and her sister Joan as

heirs. And because Philip held of the King, *in capite*, the advowson and other lands, &c., of his were seised into the King's hand, and the advowson, with other lands, &c., was assigned to his widow Mary as dower, upon her suit in Chancery. She demised her estate to Ralph Basset and his heirs. Ralph died seised, and the advowson descended to his son and heir Ralph, who presented. Joan daughter of Mazera married Alexander de Fryville, and they had issue the defendant Baldwin as son and heir. Matilda married one Ralph le Botiler and they had issue one Ralph as son and heir. Ralph had issue Ralph as son and heir, who is under age and in the King's wardship. Joan the younger sister married Henry Hillary. After Mary's death the right to the advowson reverted to the aforesaid

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A.D. 1343. declaration by judgment, after exception had been taken by the party.—*Moubray*. We tell you that it is quite true that Philip was seised, as above, and presented, and from him descended as above, and also there was assignment of dower, as above; and we tell you that, after the death of Mary, tenant in dower, the King the father of the present King seized this advowson, among other lands, &c., and afterwards this same advowson was assigned, in the Chancery, to Ralph le Botiler, who was issue of Maud, which Ralph was ancestor of the infant who is now in the King's wardship, in the name of purparty, and afterwards the prebend became void through the death of the presentee of Ralph Basset who was heir of the assignee of Mary, tenant in dower; and we say that Joan, mother of Baldwin, against whom the writ is brought, presented Thomas de Blaston as you suppose, through whose death the prebend is now void, so that by the presentation of our ancestor as sole patron, in accordance with the matter which we show, the ancestor of the infant who is now in the King's wardship was simply put out of possession, without this that there was any composition before the presentation made to Thomas de Blaston; judgment whether the King shall be admitted to this writ.—

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damender la moustraunce par agarde, apres chalange A.D. 1343.
 de partie.—*Moubray*. Nous vous dioms qe bien est
 verite qe Phelip fut seisi, *ut supra*, et presenta, et
 de luy descendi *ut supra*, et auxi lassignement de
 dower, *ut supra*; et vous dioms qe, apres la mort
 M.¹ tenante en dower, le Roi le pere seisist, entre
 autres terres,² &c., cest avowesoun, et puis mesme
 cest avowesoun en la Chauncellerie fut assigne a
 Rauf Boteler, qe fut issue de Maude, quel Rauf fut
 auncestre lenfant qore est en la garde le Roi, en
 noun de purpartie, et puis la provandre se voida
 par la mort le presente Rauf Basset qe fut heir
 del assigne M. tenante en dower; et dioms qe
 Johane, mere Baudewyn, vers qi le bref est porte,
 presenta Thomas Blastone, come vous supposez, par
 qi mort la provandre est ore void, issint qe par le
 presentement nostre auncestre come soul avowe,
 solonc la matere qe nous moustroms, launcestre
 lenfaunt qest ore en la garde le Roi fut de nette
 mys hors de possessioun, sanz ceo qil y avoit nule
 composicion avant le presentement fait a Thomas
 Blastone; jugement si a cel bref voille le Roi estre

parceners, and, on a voidance of the prebend, a dispute arose between Joan who was the wife of Alexander and her co-parceners, with their husbands, touching the advowson, so that it was agreed among them that Joan daughter of Mazera, who was then "particeps eyneia" to whom, of common right, it belonged to present, should then present, commencing her turn, that on the next voidance Matilda with her husband, as in her right, should present, and that on the third voidance Joan the younger sister with her husband, as in her right, should present, and

so the parceners and their heirs alternately and successively should present for ever. In virtue of this agreement Joan daughter of Mazera presented one Thomas de Blastone, who on her presentation was admitted and installed, on whose death the prebend is now void. And because this is the second voidance after the agreement, and also after Mary's death, it belongs to the King to present by reason of the wardship of Ralph cousin and heir of Ralph le Botiler.

¹ Harl., and 25,184, Margerie.

² terres is omitted from Harl.

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A.D. 1343. *Thorpe*. Do you claim anything in the patronage?—
KELSHULLE. It seems that he claims to be sole patron until this be deraigned against him by writ of Right.
—*Stouford*. We do not admit that there was any such allotment of the advowson, as his purparty, made to the ancestor of the infant who is in the King's wardship, nor can we admit it; but you see plainly that they do not deny the composition made between the parceners, to present by turn, as we have alleged for the King, and in virtue of that composition, even though there was such an allotment of a purparty previously made to one parcener, she could agree to it at the next voidance, or disagree, at her pleasure, and throw herself into the turn among her co-parceners; and we fully admit that Joan the ancestor

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resceu.¹—*Thorpe*. Clamez vous rien en lavowere?—A.D. 1343.

KELS. Il semble qil cleyme destre soul avowe² tanqe ceo soit derene par bref de dreit vers luy.—*Stouf*. Nous conissons pas qil y avoit tiel allotement de lavowesoun en³ purpartie fait a launcestre lenfaunt qest en la garde le Roi, nel poms pas conustre; mes vous veiez bien coment ils ne dedient pas la composicion fait entre les parceners de presenter par tourn, come nous avoms⁴ allegge pur le Roi, par quel composicion, tut y avoit il tiel allotement de purpartie adevant fait a lune parcenere, ele le⁵ put agreer a la proschein voidaunce ou desagreer, a sa volunte, et gettre en tourn entre ses parceners; et nous conissons bien⁶ qe⁷ Johane⁸ auncestre

¹ The plea, preceded by a protestation, was, according to the roll, "quod dominus Edwardus nuper Rex, pater, &c., post mortem prædictæ Mariæ seisivit in manum suam advocacyem prædictam una cum aliis terris et tenementis, versus quem dominum Regem Radulfus le Botiler antecessor prædicti Radulfi, &c., secutus fuit in Cancellaria sua habendi partem suam quæ eum contingebat de terris et tenementis, feodis et advocacyibus quæ prædicta Maria tenuit in dotem, &c., ita quod prædicta advocatio præbendæ prædictæ integre assignata fuit parti prædicti Radulfi per nomen advocacyis præbendæ in ecclesia collegiali de Tamworth quam Simon de Wykforde tunc tenuit. Et dicit quod ubi dominus Rex cognovit prædictam præsentationem per prædictam Johannam filiam Mazern antecessorem suam factam, et suum præsentatum admissum fuisse, quam præsen-

"tationem idem dominus Rex supponit factam fuisse virtute concordie prædictæ, prædicta Johanna præsentavit ad eandem prædictum Thomam de Blastone, qui ad præsentationem suam fuit admissus et installatus, antequam aliqua concordia inde facta fuit, virtute cujus præsentationis prædictus Radulfus fuit extra quamcunque possessionem præsentandi, et non potuit inde habere remedium per breve de Quare impedit, et per consequens domino Regi, qui nunc clamat præsentare in jure prædicti heredis præfati Radulfi, non competit breve possessorium præsentandi ad eandem, unde petit judicium," &c.

² 25,184, avowere.

³ 25,184, oue.

⁴ L., vous avez, instead of nous avoms.

⁵ 25,184, ne. The word is omitted from L.

⁶ L., and Harl., pas.

⁷ qe is omitted from Harl.

⁸ Johane is omitted from L.

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A.D. 1343. of Baldwin de Fryville presented before the composition, and so did all the other parceners, but on the dispute which arose a composition was accepted, as we have alleged, as above, which composition they do not deny, nor do they deny that this is the second turn; judgment for the King.—*Derworthy*. We have alleged one fact, to wit, that the whole advowson was allotted to Ralph le Botiler, contrary to which fact there cannot be understood to be such a composition,

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B. Fryville presenta avant la composicion, et issint.^{A.D. 1348.}
 firent¹ touz les autres parceners, mes sur cel debat
 composicion se prist, come nous avoms allegge, *ut*
supra, quele composicion ils ne dedient par, ne qe
 ces est le seconde tourn; jugement pur le Roi.²—
Derworthi. Nous avoms allegge un fait, saver, qe
 lavowesoun entier fut allote a Rauf Boteler, countre
 quel fait ne put estre entendu tiel composicion, qar

¹ L., *current*.

² The protestation and replication for the King were according to the roll "non cognoscendo advoca-
 "tionem supradictam post mortem
 "præfatæ Mariæ prædicto Radulfo
 "antecessori dicti Radulfi nunc
 "infra ætatem, &c., in partem
 "suam, ut præmittitur, assigna-
 "tam fuisse quod, ex
 "quo prædictus Baldwinus ex-
 "presse cognovit prædictam
 "advocationem præfatis participi-
 "bus descendisse, nec dedit
 "quin in proxima vacatione
 "præbendæ prædictæ per mortem
 "præfati Simonis de Wykforde
 "contentio mota fuit inter
 "participes supradictas super
 "præsentatione ejusdem præbendæ,
 "nec quin concordatum fuit
 "inter eas quod prædicta Johanna
 "filia Mazeræ quæ tunc erat
 "particeps eynecia, ad quam de
 "jure competitivè præsentare, ut
 "in incipiendo turnum, &c., ad
 "tunc haberet præsentationem
 "suam ad eandem, ita quod in
 "proxima vacatione ejusdem ex
 "tunc accidente prædicta Matildis
 "soror junior, simul cum viro
 "suo, ut in jure ejusdem
 "Matildis antecessoris prædicti
 "Radulfi, qui est infra ætatem,
 "&c., et cujus heres ipse

"Radulfu est, præsentarent ad
 "eandem, et nihil aliud allegat
 "ad excludendum dominum
 "Regem de præsentatione sua
 "supradicta in hac parte nisi
 "prædictam præsentationem præ-
 "fato Thomæ de Blastone per
 "prædictam Johannam anteces-
 "sorem ipsius Baldwinus factam,
 "quem supponit admissum fuisse
 "et installatum ante concordiam
 "prædictam, et sic præfatum
 "Radulfum qui est infra ætatem
 "et in custodia, &c., extra
 "quacunque possessionem præ-
 "sentandi fore debere, cui non
 "competeret breve possessorium
 "præsentandi, nec per consequens
 "domino Regi in jure ejusdem
 "heredis, et sic expresse cognovit
 "concordiam prædictam inter
 "easdem participes factam, per
 "quam quidem concordiam satis
 "probat præfatum Radulfum
 "fore in possessionem in communi
 "cum participibus suis prædictis
 "præsentandi, &c., per quod ad
 "dominum Regem, ratione minoris
 "ætatis ejusdem Radulfi in ista
 "vacatione, ut in proxima vacatione
 "extunc accidente, ut præmittitur,
 "dinoscitur pertinere, petit judi-
 "cium pro domino Rege, et
 "breve Episcopo," &c.

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A.D. 1343. for a composition can only be between those who are in possession of the patronage; therefore, if one was sole seised, through such a partition, of the entire advowson, even though there were such words of composition spoken, which could not take effect, nothing could vest in the others through such a composition; consequently, when one presented who was not patron, she would present rather by usurpation, and so would it be a sole patron who presented by reason of a turn.—*Pole*. Certainly it is not so, for, notwithstanding the allotment of a purparty, a parcener can elect to throw back in common that which she took with the consent of her co-parceners.—*R. Thorpe to Derworthy*. What recovery would you give otherwise, after the composition, to the parcener who is out of possession, for, since you prove that your presentation would be an usurpation, the one who has a right will have an action only by writ of Right, and that she cannot have, because it does not lie between parceners who claim one and the same right. Therefore, if you oust her from this writ, you disinherit her, according to your intendment, by this presentation which you affirm to be nothing else than an usurpation.—*KELSHULLE to Moubray*. What do you say—that Thomas de Blaston who was presented by your ancestor was installed, so that his presentation took effect—or not—before the composition?—*Derworthy*. We will imparl.—And he returned and said, as above, that his ancestor presented Thomas de Blaston, who was admitted by the Bishop on his presentation, without this that any composition was made at any previous time; ready, &c.; and

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composicion ne poet estre¹ forsque entre ceux qe A.D. 1343.
sount² possessiones de lavowere; donques, si un fut
soul seisi, par tiele purpartie, de lavowesoun entier,
tut furent tieles paroles³ de composicion parles, qe
ne pount prendre effect, rien par tiele composicion
put vestier en les autres; *per consequens*, quant cele
presenta qe ne fut pas avowe, ele presentereit plus
toust par purprise, et issint serreit soul avowe qe
presentereit par resoun de tourn.—*Pole*. Certes il
nest par issint, qar, *non obstante* lallotement de
purpartie, parcenere⁴ poet eslire de gettre⁵ en comune
arere ceo qe le prist par assent de ses parceners.—
*R.*⁶ *Thorpe a Derworthi*. Quel recoverir durrez⁷
vous autrement,⁸ apres la composicion, a la parcenere⁹
qest hors, qar, depuis qe vous provez¹⁰ qe vostre
presentement serreit purprise, donques celui qe dreit
ad avera accion mes par bref de Dreit,¹¹ et cel¹²
nient, qar cel ne gist pas entre parceneris qe
cleyment un mesme dreit. Donques, si vous loustes
de ceo bref, vous la desheritez, a vostre entente,
par cele presentement qe vous naffermez autre qe
purprise.—*KELS. a Moubray*. Quel dites vous qe
Thomas de Blastone presente par vostre auncestre
fuit enstalle issint qe son presentement¹³ prist effect
ou noun avant¹⁴ la composicion?—*Derworthi*. Nous
enparleroms.—Et revint et dit, *ut supra*, qe soun
auncestre presenta Thomas de Blastone, qe fut resceu
Devesqe a son presentement, sanz ceo qe nul com-
posicion se fist de temps avaunt¹⁵; prest, &c., et

¹ L., nest pas, instead of ne poet estre.

² L., furrent.

³ 25,184, paroles.

⁴ Harl., parcenenerie.

⁵ L., jettre.

⁶ R. is omitted from Harl.

⁷ L., dirrez.

⁸ autrement is omitted from L.

⁹ Harl. and 25,184, parcenerie.

¹⁰ 25,184, pernes.

¹¹ The words de Dreit are omitted from L.

¹² The words et cel are from 25,184 alone.

¹³ L., presentement presente.

¹⁴ 25,184, quant.

¹⁵ 25,184, vous devant, instead of temps avaunt.

No. 81.

A.D. 1343. so the infant's ancestor was out of possession, as above; judgment.—*Thorpe*. You shall not be admitted to that, for by the manner of your plea you previously abode judgment as to whether the writ lies, notwithstanding that such a composition was made before Thomas de Blaston was admitted, because you were proving all the time that the composition could not take effect at any time after the partition, on the ground that the other parceners could not have and had not anything when the composition was made, and so you accepted the composition as we alleged it; judgment whether you shall be admitted to say the reverse.—*Seton*. Our plea was all the time and still is to prove that the infant's ancestor was out of possession, so that this writ does not lie; and although we say that the composition could not take effect after the partition, we said expressly that our ancestor presented before any composition, so that it cannot, on that ground, be held against us as not denied that the composition was made before our ancestor's presentee was admitted and installed.—*KELSHULLE*. Certainly they were never at one with you that the composition was made before his ancestor's presentation took effect, for the Court asked them whether it was so, and to that they did not answer.—*Pole*. Still their answer which they give, if they can be permitted to do so, is double, because by the manner of their plea they admit the composition, and say that consequently, because it is the first voidance after the composition, it belongs to them to present, and consequently hereafter at the second turn to the heir in the King's wardship, thus admitting the composition to be

No. 81.

issint launcestre lenfaunt hors de possession, *ut supra*; A.D. 1343.

jugement.—*Thorpe*. A ceo ne serrez resceu, qar par la manere de vostre plee adevant vous demurastes en jugement, *non obstante* qe tiel composicion fut fait adevant qe Thomas Blastone fut resceu, si le bref gist, pur ceo qe vous provastes tut¹ temps qe la composicion a nul temps apres la purpartie, &c., put prendre effect pur ceo qe les autres parceneris ne pount, ne avoient rien quant la composicion se fist, issint acceptastes la composicion solonc ceo qe nous lavoms allegge; jugement si a dire le reverse serrez resceu.—*Setone*. Nostre plee fut touz jours, et unqore est a prover launcestre lenfaunt hors² de possession, issint qe ceo bref ne gist pas; et coment qe nous dioms qe la composicion ne put prendre effect apres la purpartie, nous deimes³ expressement qe nostre auncestre presenta avant⁴ nul composicion, issint qe par taunt ceo ne put estre tenu nient dedit sur nous qe la composicion se fist avant qe le presente nostre auncestre fuit resceu et installe.

—*Kels*. Certes ils ne furent unques a un ovesqe vous qe la composicion se fist avant qe le presentement soun⁵ auncestre prist effect, qar Court demanda deux sil fut issint, a quei ils respondirent [pas.—*Pole*. Unqore lour respouns]⁶ qils donent,⁷ sils puissent⁸ avener,⁹ est double, qar par manere del plee ils conissent la composicion, [et, *per consequens*, pur ceo qe cest la primere voidaunce apres la composicion, a eux appent a presenter, et *per consequens* autrefoith, al seconde tourn, al heir en la garde le Roi, issint conissaunt la composicion]⁶ estre

¹ L., taunt.

² 25,184, estre hors.

³ 25,184, dioms.

⁴ L., come.

⁵ Harl., lour.

⁶ The words between brackets are omitted from L.

⁷ L., dient.

⁸ 25,184, pensent.

⁹ 25,184, a venir.

No. 31.

A.D. 1343. good and full; the other plea is that, through their ancestor's usurpation, before the composition took effect, the composition had always lost in force, and the heir in the wardship of the King was put out of possession of the whole, so that he cannot be admitted to this double plea.—*Thorpe* took another mode of pleading, and said: They have not denied that on the dispute touching the presentation of Thomas de Blaston the agreement and the composition were accepted, whereas, whether the composition was made before Thomas was admitted or afterwards, and particularly in a case of presentation made by the parcener who was the eldest who of right ought to have the first presentation without any composition, that presentation cannot be other than in the commencing of a turn; and inasmuch as this is the second turn, where by the composition and by common law the second turn belongs to the King who has to present in right of the second parcener, judgment.—*Seton*. In that case it would have been necessary to count a different count for the King; but the King's declaration is that it belongs to him to present because it is the second turn after the composition, and that point he does not maintain; judgment how we are to depart.—*Thorpe*. It is maintained in effect, and on that we are abiding judgment.—*Pole*. Nothing shall be entered as to the partition according to the manner of this plea.

No. 81.

bone et pleyne; autre est qe par¹ la² purprise A.D. 1343.
 lour auncestre, avant qe la composicion prist effect
 qe la composicion ust de tout temps perdu sa force,
 et leir en la garde le Roi mys hors de possessioun
 de tout, issint³ a ceo plee double ne poet il estre
 resceu.—*Thorpe* prist autre manere de plee, et dit
 qils nount pas dedit qe sur le debat del presente-
 ment Thomas de Blastone lacorde et la composicion
 se prist,⁴ ou⁵ tout fut la composicion fait avant qe
 Thomas fut resceu ou apres, et nomement par pre-
 sentement fait par cele qe fut eignesse qe de dreit
 dust aver sanz composicion le primer presentement,
 ceo ne put estre autre qen comenceaunt tourn; et
 pur ceo qe cest le seconde tourn a quel par la
 composicion, et de comune ley, le seconde tourn
 appent au Roi qest a presenter en le dreit la
 seconde parcenere,⁶ jugement.—*Setone*. Donges covien-
 dreit il counter⁷ autre counte pur le Roi; mes la
 moustraunce le Roy est qa luy appent a presenter⁸
 pur ceo qe cest le seconde tourn apres la composi-
 cion, et ceste chose ne meyntynt il pas; jugement
 coment nous devons departir.—*Thorpe*. Il est meyn-
 tenu⁹ en effect, et sur ceo sumes en jugement.—
Pole. Rien serra entre¹⁰ de la purpartie par la
 manere de ceo plee.¹¹

¹ The words qe par are omitted from L.

² The words par la are omitted from Harl.

³ Harl., issint qe.

⁴ L., fist.

⁵ 25,184, et.

⁶ Harl., parcenenerie.

⁷ Harl., countetz, instead of coviendreit il counter.

⁸ The words a presenter are omitted from 25,184.

⁹ L., a meyntener.

¹⁰ entre is omitted from L.

¹¹ The words *Et ad iudicium* are added in L., and the word Jugement in Harl.

The conclusion of the report is, however, in Trinity Term next following (No. 10).

The pleadings on the roll subsequent to the replication printed above (p. 429, note 2) are the following:—

" Et Baldewinus dicit quod ubi
 " dominus Rex per demonstrati-
 " onem suam prædictam supponit
 " prædictum Thomam de Blastone

No. 32.

A.D. 1343. (32.) § Note that two sued on a statute merchant.
 Statute The certificate was returned into the Common Bench

"fuisse presentatum et installatum, &c., ad presentationem predictæ Johanne antecessoris ipsius Baldewini virtute concordie predictæ, et quod ista est proxima vacatio post mortem ejusdem Thomæ, et sic secundus turnus post concordiam predictam, per quod ad dominum Regem ut in jure predicti heredis ad præsens pertinet præsentare, &c., advocatio præbendæ predictæ integre assignata fuit præfato Radulfo le Botiller in Cancellaria domini Regis per nomen advocatonis præbendæ in ecclesia collegiali de Tamworthe, ut supradictum est, et sic fuit ille Radulfus solus patronus ejusdem advocacionis, et præsentatio quam predicta Johanna antecessor ipsius Baldewini fecit præfato Thomæ de præbenda predicta posuit predictum Radulfum extra quamcunque possessionem præsentandi, &c., et extra quodcunque recuperare per breve de Quare impedit, et per consequens dominus Rex virtute ejusdem presentationis ad manutenendum breve istud breve de Quare impedit in jure predicti heredis titulum habere non potest, ex quo ipse paratus est verificare quod ante presentationem et installationem de predicto Thoma non fuit aliqua concordia seu compositio facta. Et dicit quod concordia predicta quam dominus Rex superius allegat, &c., facta fuit post installationem predicti Thomæ

"de Blastone, &c., super qua concordia oportet dominum Regem demonstrationem suam predictam manutenere, &c. Et sic dicit quod ista est proxima vacatio præbendæ predictæ post predictam concordiam, &c., quæ quidem concordia posuit dictam advocacionem in turno participum, quæ prius fuit extra naturam partitionis, &c., per assignationem predictam et predictam presentationem predictæ Johanne antecessoris ipsius Baldewini factam, per quod ad istum Baldewinum ista vice ut in proxima vacatione post concordiam predictam pertinet ad predictam præbendam præsentare, unde dicit quod ipse non intendit quod dominus Rex ad demonstrationem suam predictam quæ supponit istam vacationem esse secundam vacationem post concordiam predictam responderi velit."

"Et Johannes [de Clone] qui sequitur, &c., dicit quod predictus Baldewinus in responsione quam primo ad excludendum ipsum dominum Regem ab actione sua predicta allegaverat dictam advocacionem integre assignatam fuisse in partem predicti Radulfi antecessoris dicti Radulfi, qui nunc infra statem, &c., et quod dictus Thomas de Blastone installatus fuit in præbenda predicta ad presentationem ipsius Johanne antecessoris ipsius Baldewini, cujus heres ipse est, &c., ante aliquam concordiam inter parti-

No. 32.

(32.)¹ § *Nota* qe deux suerent un estatut mar. A.D. 1343.
chaunt. La certificacion retourne² en Comune Baunk Statut

¹ From L., Harl., and 25,184.

| ² retourne is omitted from L.

No. 82.

A.D. 1343. "*non est inventus.*" The plaintiffs did not appear, but Merchant. others, as their executors, proffered themselves and Note that upon a made *profert* of a will, and prayed execution. And they had it.

sued by
the tes-
tator the
executors
have exe-
cution.

"cipes prædictas inde factam ut
"per illam præsentationem sic
"adeptam supponit dictum Radul-
"fum antecessorem Radulfi, qui
"nunc est infra ætatem, extra
"quamcunque possessionem præ-
"sentandi, et prædictam Johan-
"nam antecessorem prædicti
"Baldewini solam tenentem in-
"tegræ advocacionis prædictæ
"fore debere, et sic asserendo
"quod per concordiam per ipsum
"dominum Regem in narratione
"sua prædictam dicto Radulfo
"antecessori, &c., qui sic extra
"possessionem fuerat, nihil inde
"juris seu possessionis conferri
"debuerat, qua quidem responsione
"sic peremptorie exhibita, alias
"præcise petiit judicium, et super
"hoc habet inde modo diem,
"&c., per quod ad nullam aliam
"responsionem peremptoriam ad-
"mitti debet, saltem cum, in
"prima responsione sua prædicta,
"concordia prædicta quam domi-
"nus Rex pro titulo suo in
"narratione sua inde supposuerat
"talis qualem ipse Rex eam tunc
"allegaverat per dictum Balde-
"winum pro concessa habebatur,
"et idem Baldwinus in dicta
"responsione sua aliquid juris
"possessionis seu præsentationis
"inde occasione alicujus con-
"cordiæ inter dictas participes
"factæ ante sibi competere non
"vendicabat, per quod dicit quod
"ipsi Baldwinus modo quasi uni
"dictorum participum virtute
"alicujus concordie inter præ-

"dictas participes factæ ista vice
"pertinet præsentare, et sic
"asserendo concordiam illam
"quam prius tacite, ut præmittitur,
"concesserat, nullatenus admitti
"debet, eo quod per prædictam
"primam responsionem suam
"supposuit se fore tenentem
"integræ advocacionis supradictæ,
"et sic sibi quasi soli possessori
"dictæ advocacionis nunc præ-
"sentare spectasse, et per con-
"cordiam quam idem Baldwinus
"allegat modo inter dictas parti-
"cipes factam, quam sibi ut uni
"participum dictæ hereditatis
"jure hereditario in communi
"tenentium ut in prima vice
"post concordiam illam initam,
"virtute concordie prædictæ, in
"præsentii vacatione præsentare
"competebat, et sic in uno et
"eodem placito tam se dictam
"advocationem integre habere
"quam cum prædictis participibus
"advocationem prædictam jure
"hereditario ut prædicitur in
"communi tenere, quæ mere
"censetur contraria. Et ex quo
"idem Baldwinus expresse cog-
"novit dictam advocacionem sibi
"et participibus suis descendisse,
"et dictam Johannam anteces-
"sorem suam in prima vacatione
"post mortem dictæ Mariæ,
"ut incipiendo turnum, eo quod
"tunc eynecia dictarum partici-
"pum extiterat, præsentasse, et
"quod ista secunda vacatio post
"mortem dictæ Mariæ quæ jure
"ipsi Radulfo infra ætatem, &c.,

No. 32.

Non est inventus. Les pleintifs ne vindrent pas, A.D. 1343.
 mes autres, come lour executours, se profirent et Mar-
 moustrerent² avant testament, et prierent execucion. chaunt.
Et habuerunt. Nota, hors
 dun certi-
 ficacion
 --- suy par le
 testatour
 les execu-
 tours ount
 execu-
 cion.¹
 [Fitz.,
*Execu-
 cion*, 53.]

¹ The words Statut Marchaunt
 are from Harl., the rest of the
 marginal note from 25,184.

² Harl., mistrent

No. 33.

A.D. 1343. (33.) § Fine between Heslarton and A. his wife
 Fine. and others in divers counties on divers writs. As to
 some writs the husband and his wife acknowledged

" ut heredi dictæ Matildis sororis
 " mediæ, ut in turno sibi accidente,
 " postquam dicta Johanna sic
 " turnum suum inde obtinuerat,
 " si plenæ ætatis fuerat, pertin-
 " erat præsentare, et, per conse-
 " quens, ad ipsum Regem ratione
 " minoris ætatis ejusdem ut in
 " turno ipsi heredi accidenti
 " pertinet præsentare, maxime cum
 " de communi jure postquam
 " eynecia participum de aliqua
 " advocacione participibus descen-
 " dente vel jure hereditario vel
 " quovismodo accidente in
 " prima vacatione ejusdem aliquam
 " præsentationem adeptæ fuerat,
 " consequenter in proxima vaca-
 " tione extunc accidendi secundæ
 " participes præsentabunt ad
 " eandem, et sic participibus
 " vicissim per turnum dinoscitur
 " pertinere, super quo jure
 " concordia quam ipse dominus
 " Rex superius in allegatione sua
 " allegaverat fundata existat, et
 " concordia per quam idem Balde-
 " winus dicit sibi ista vice præ-
 " sentare debere inconsona est
 " et derogans juri in hoc quod
 " dicta Johanna, ut una participum,
 " duas præsentationes ad eandem
 " præbendam immediate jure
 " hereditario haberet, quæ nullo
 " modo intelligi potest nisi fuerit
 " ratione alicujus facti specialitatis
 " inter participes prædictas con-
 " tracti, de quo per eundem
 " Baldwinum nihil est ostensum,
 " unde ex præmissis petit judicium
 " pro domino Rege et breve
 " Episcopo," &c.

The judgment follows thus:—

" Et quia prædictus Baldewinus
 " non dedit prædictam concor-
 " diam factam fuisse inter
 " participes prædictas in forma
 " prædicta, quæ concordia con-
 " cordans fuit juri communi, et
 " per quam concordatum fuit
 " quod prædicta Johanna, ante-
 " cessor ejusdem Baldewini, in
 " prima vacatione adtunc acci-
 " dente præsentaret, et in proxima
 " vacatione, &c., extunc acci-
 " dente prædicta Matildis ante-
 " cessor prædicti heredis, &c.,
 " simul, &c., præsentaret, nec
 " dedit istam vacationem nunc
 " fore secundam vacationem post
 " concordiam prædictam, et sic
 " non potest dici nec in jure
 " intelligi quod idem heres est
 " extra possessionem præsentandi,
 " et de prædicta concordia quam
 " prædictus Baldewinus superius
 " allegat, quæ non fuit consonans
 " juri communi, idem Baldewinus
 " nullum speciale factum Curie
 " hic ostendit, videtur Curie
 " hic quod, non obstantibus
 " rationibus per prædictum Balde-
 " winum superius allegatis, per-
 " tinet ad dominum Regem ad
 " præsens ad prædictam præben-
 " dam præsentare. Et ideo con-
 " sideratum est quod dominus
 " Rex recuperet præsentationem
 " suam ad præbendam prædictam,
 " et habeat breve Episcopo
 " Coventrensi et Lichfeldensi, loci
 " Diocesano, quod, non obstante
 " reclamatione prædicti Balde-
 " wini, ad præsentationem domini
 " Regis ad præbendam prædictam
 " idoneam personam admittat."

No. 88.

(88.) ¹ § *Finis* ² entre Heslartone ³ et A. sa femme A.D. 1343.
 et autres en divers countes sur divers brefs. Quant *Finis*.²
 a ascuns brefs⁴ le baroun et sa femme conisserent⁵ *[Fitz., 9.]*

¹ From L., Harl., and 25,184.

² L., *fyn*.

³ L., Haslartone; 25,184, Heselartone.

⁴ brefs is omitted from L.

⁵ Harl., conissoient; 25,184, conisaint.

No. 34.

A.D. 1343. the right to others, and the husband alone took back an estate. And on another writ they acknowledged in common, and of parcel mentioned in one and the same writ the husband alone took back an estate, and of another parcel he and his wife took back an estate, &c.

Avowry
by the
King's
bailiff.
And he
has not
aid of the
King.
A case in
the Derby
Eyre
agrees, *per*
HERLE.

(34.) § Avowry by the King's bailiff for suit to a Hundred Court, and he laid the seisin, by prescription, in the King and his progenitors.—*Pole*. We tell you that the King and his progenitors have not been seised from all time; ready, &c.—*Moubray*. Then admit the seisin, and prove that it is not a title because possibly it has not been continued from all time, or else traverse it with respect to all time.—*HILLARY*. Will you maintain your avowry?—*Moubray*. Yes, Sir; seised from all time; ready, &c.—And the

No. 84.

le droit as autres, et le baroun soul¹ reprist estat. A.D. 1343.
Et autre bref ils conisserent² en comune, et de
parcelle en un mesme bref le baroun soul reprist
estat, et dautre parcelle luy et sa femme reprister-
ent estat, &c.³

(34.)⁴ § Avowere par baillif le Roi pur suyte a Avowere
Hundred, et lia la seisine,⁵ par prescripcion, en le par baillif
Roi et ses progenitours.⁷—*Pole*. Nous vous dioms le Roi. *Et*
que le Roi et ses progenitours nount pas este seisis non habet
de tout temps⁸; prest, &c.⁹—*Moubray*. Conissetz auxilium
donques seisine, et provez gele nest¹⁰ pas title pur de Rege.
ceo par cas gele nest pas de tout temps continue, Concordat
ou autrement la traversez de tout temps.—*HILL*. in itinere
Voillez meyntener vostre avowere?—*Moubray*. Sire, Derby, per
oyl¹¹; seisi de tout temps¹²; prest, &c.—*Et alii c* HEALE.⁵

¹ soul is omitted from 25,184.

² Harl., conissoient; 25,184, conisaint.

³ Harl., *inter* Salvayn et Heslar-tone.

⁴ From L., Harl., and 25,184, but corrected by the Record, *Placita de Banco*, Easter, 17 Edw. III. R^o 205, d. It there appears that the action of Replevin was brought by the Prior of St. Oswald of Nostell against William Daubenay and Robert son of Thomas del Merke of Dykering.

⁵ The marginal note, except the word Avowere, is from 25,184 alone.

⁶ The words la seisine are omitted from L.

⁷ The avowry was by the defendant William "ut ballivus domini Regis de Wappentachio de Bersetlowe (Bassetlaw, Notts), pro se et pro predicto Roberto, ut subballivo suo, quia

"dicit quod idem Prior tenet
"manerium de Sulkholme, cum
"pertinentiis, infra Wappentach-
"ium de Bersetlowe per servitium
"faciendi sectam de Wappentachio
"de Bersetlowe de qua
"quidem secta dominus Rex
"nunc et omnes progenitores
"domini Regis fuerunt seisisi
"per manus ipsius Prioris et
"prædecessorum ipsius Prioris a
"tempore quo non extat memoria
"&c. Et quia prædicta secta a
"retro fuit per quatuor annos
"ante diem captionis prædictæ
"cepit ipse averia prædicta."

⁸ temps is omitted from Harl.

⁹ This plea is practically in agree-
ment with that upon the roll, upon
which issue was joined.

¹⁰ L., nad.

¹¹ The words Sire, oyl are omitted
from L.

¹² temps is omitted from L.

Nos. 35, 36.

A.D. 1343. other side said the contrary.—*Moubray*. Now we pray aid of the King.—*HILLARY*. You shall not have it.

Writ of Deceit in the King's Bench. And it was said that, if the fine had been reversed in its entirety, it would have been taken out of the Treasury and cancelled.

(35.) § The Earl of Lancaster, as chief lord, sued a writ of Deceit, in the King's Bench, to reverse a fine levied between A. and B. of land whereof parcel was Ancient Demesne, and it was found by inquest that parcel was Ancient Demesne, and it was adjudged that in respect of that parcel which of right is Ancient Demesne the fine should be reversed and entirely annulled, and that the parties should be taken.—And the point was touched that the person who was in possession of the land by reason of such a render on a fine reversed would maintain his possession, because it was good as between the parties, and this judgment of reversal would aid him in his possession.—Nevertheless *Quære*.

Deceit. And note as to this action.

(36.) § A writ of Deceit was brought by a woman, who was chief lady, against one who had recovered tenements held of her *in capite* by a writ of *Præcipe in capite*, in order to deprive her of her court, and the deceit was found by inquest, and the damages were assessed. And she prayed her damages,

Nos. 85, 86.

contra.¹—*Moub.* Ore prioms eide de Roi.—*HILL.* A.D. 1848.
Vous ne laverez pas.²

(85.)³ § Le Counte de Launcestre suyst bref de Desceite, come chief seignur, en Baunk le Roi, a reverser un fyn leve⁵ entre A. et B. de terre dount parcelle fut auncien demene, [et par enqueste fut trove qe parcelle fut auncien demene],⁶ et fut agarde⁷ qe de cele parcelle qe de dreit est⁸ auncien demene la fyn fut reverse et anienti de tout, et qe les parties fussent⁹ pris.—Et fut touche qe cely qe fut einz en la terre par tiel rendre sur fyn reverse mayntendreit¹⁰ sa possession, qar entre les parties ele fut bone, et cel jugement del reverser¹¹ leidreit en sa¹² possession.—*Quære tamen*.¹³

(86.)¹⁴ § Bref de Desceite fut porte par une femme chief seignur vers un qavoit recoveri tenements tenuz de luy en chief par un bref de *Præcipe in capite* pur luy tollir¹⁶ sa court, et par enqueste fut trove la desceite, et damages taxes. Et il pria

Bref de Desceite in Baunk le Roi. Et fut dit, sil ust este reverse en tut, il ust este pris hors de la Tresorie et dampne.⁴ [Fitz., *Disceit*, 37.]

Desceite. *Et nota de seste accion*.¹⁵ [Fitz., *Disceit*, 38.]

¹ The report ends here in 25,184.

² Harl., unges nel averetz, instead of Vous ne laverez pas. According to the record there was a verdict at *Nisi prius* "quod dominus Rex qui nunc est, nec aliquis progenitorum suorum, a tempore quo non extat memoria, unquam seisisit fuit de secta ad Wapentachium de Berset lowe per manus Prioris qui nunc est nec aliquorum prædecessorum suorum pro manerio de Sulkholme. Quæsi ad quæ damna dicunt quod ad damnum ipsius Prioris sex solidorum et octo denariorum."

Judgment was given for the Prior to recover these damages.

³ From L., Harl., and 25,184.

⁴ The words Bref de are from L. alone, and the words of the marginal note subsequent to Desceite are from 25,184 alone.

⁵ leve is omitted from 25,184.

⁶ The words between brackets are omitted from 25,184.

⁷ L., ajuge.

⁸ L., fut; Harl., en. In 25,184, the words fuist en are substituted for de dreit est.

⁹ L., furrent; 25,184, feussent.

¹⁰ L., mayntendra.

¹¹ 25,184, revercion lun.

¹² Harl., la.

¹³ *tamen* is from L. alone.

¹⁴ From L., Harl., and 25,184.

¹⁵ The words *Et nota de seste accion* are from 25,184 alone.

¹⁶ Harl., tollir.

No. 87.

A.D. 1343. and it was found that she was not damaged, because she had lost neither her court nor her seignory.

Mesne.
And note
that
attorn-
ment
ousts the
tenant in
demesne
from
acquitting
the other,
if the other
have good
cause to
have at-
tornment.

(37.) § A writ of Mesne was brought against John de Wylughby.—*Thorpe*. Robert, John's father, gave and granted the manor of F.,¹ of which manor his services are parcel, to one M.¹ for term of her life, by reason of which grant the plaintiff attorned, and this M. gave and granted her estate in the manor to one B.¹ to whom the plaintiff has attorned, and afterwards John de Wylughby, against whom this writ is sued, confirmed B.'s estate for the term of his life, and the plaintiff afterwards was and still is attendant in respect of his services on another, he can maintain this action against us.—*Grene*. Which will

¹ For the real names and facts see p. 447, note 14.

No. 37.

ses damages, et fut trove qil nest pas en damage, A.D. 1343.
 qar ele nad perdu ne sa court ne sa seignurie.¹

(37.)² § Bref de Mene fut porte vers Johan de Wilby.—*Thorpe*. Robert,⁴ pere Johan, dona et graunta le maner de F., de quel maner ses services sount parcellle, a un M. a terme de sa vie,⁵ par quel graunt le pleintif⁶ sattourna, la quele M. dona et graunta son estat del maner a un B. a qi le pleintif est attourne, et puis Johan de Wilby, vers qi ceo bref est suy,⁷ conferma lestat B. a terme de sa vie, et le pleintif puis et⁸ unqore⁹ est¹⁰ attendaunt¹¹ a B.; jugement si devers nous, de puis qil est attendaunt¹² de ses services a autre sil puisse ceste accion vers nous¹³ meyntener.¹⁴—*Grene*. Le quel

Mene.
Et nota qe
 latorne-
 ment oste
 le tenant
 en demene
 dacquiter
 lautre, si
 lautre eit
 cause
 daver
 attorne-
 ment.³
 [Fitz.,
Mesne,
 32.]

¹ In Harl. are added the words *Quere infra ex alia parte* i.e., Look below on the other side of the folio. This shows that the Harleian must have been copied from some other MS. in which the above report and No. 8 of the Trinity Term next following were on different sides of the same folio. In the Harleian they are on different folios, though the words "*ut patet supra, folio eodem*," occurring in the Trinity Term report, again show that they were copied from another MS. In Fitzherbert's Abridgment the report assigned to Easter Term agrees, after the first few words, with that of Trinity Term.

² From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 17 Edw. III. R^o 253, d. It there appears that the action was brought by Ralph de Lynedene against John de Wylughby, knight. The declaration was that whereas Ralph held of John

a messuage and lands in Benyfelde (Benefield, Northants) by homage, fealty, and scutage, Humphrey de Bassingbourne, knight, distrained him for homage, fealty, and suit of court.

³ The marginal note, except the word Mene, is from 25,184 alone.

⁴ Harl., William. The other MSS. omit both this word and pere.

⁵ The words *a terme de sa vie* are omitted from L.

⁶ L., tenaunt.

⁷ L., ore porte.

⁸ et is from Harl. alone.

⁹ unqore is omitted from L.

¹⁰ 25,184, attourne.

¹¹ L., attourna, instead of est attendaunt.

¹² Harl., entendaunt.

¹³ The words *vers nous* are omitted from L.

¹⁴ Harl., user. The plea was, according to the roll, "*quod quidam Robertus de Wylughby, pater prædicti Johannis, cujus heres*

No. 87.

A.D. 1343. you say—that we are attendant on B.¹ by reason of M.'s¹ gift and grant, or by reason of your own confirmation?—*Thorpe*. I have alleged my facts with certainty such as they are.—*Grene*. If I am willing to admit the gift and grant made by M.,¹ and to allege that she is dead, you will still try to bind me by your confirmation, and my attornment; and if I traverse your confirmation you will say that M.,¹ to whom I attorned, as above, is living, and will abide judgment.—*Thorpe*. Say what you will.—*Grene*. We hold of you by such services, and for those services we are distrained, and you and your ancestors have acquitted us from all time, without this that we are attendant on B.,¹ as you have alleged; ready, &c.—And the other side said the contrary.

¹ For the real names see p. 447, note 14.

No. 37.

voillez vous dire qe nous sumes¹ attendaunt² a B. A.D. 1343. par le doun et graunt de M. ou³ par vostre confermement demene?—*Thorpe*. Jay allegge moun fait en certain tiel come il est.—*Grene*. Si jeo voille conustre le doun et le graunt fait par M., et allegger qele est mort, unqore vous lierez sur moy vostre confermement, et mon attournement; et si jeo traverse vostre confermement, vous dirrez qe M. est en vie a qi jeo su attourne *ut supra*, et demurez⁴ en jugement.—*Thorpe*. Dites ceo qe vous voillez.—*Grene*. Nous tenoms de vous par autiels services, pur queux services nous sumes destreint, et vous et vos⁵ auncestres nous avez⁶ acquite de tout temps, sanz ceo qe nous sumes attendaunt⁷ a B. come vous avez allegge; prest, &c.—*Et alii e contra*.⁸

" ipse est, et Margareta, uxor
 " ejus fuerunt seisiiti de manerio
 " de Lilleforde, cum pertinentiis,
 " ad quod prædicta servitia prædicti
 " Radulfi spectant, videlicet ipsis
 " Roberto et Margaretæ et heredi-
 " bus ipsius Roberti, quæ quidem
 " Margareta, post mortem prædicti
 " Roberti, statum suum quem
 " habuit in prædicto manerio de
 " Lilleforde cum pertinentiis con-
 " cessit cuidam Willelmo de
 " Wylughby, virtute cujus con-
 " cessionis prædictus Radulfus se
 " attornavit eidem Willelmo, &c.,
 " et ipse Johannes de Wylughby
 " statum ejusdem Willelmi in
 " vita prædictæ Margaretæ ratifi-
 " cavit, concessit, et confirmavit
 " prædicto Willelmo ad totam
 " vitam ipsius Willelmi tenendum
 " de capitalibus dominis, &c. Et
 " ex quo prædictus Radulfus est
 " intendens de servitiis suis

" prædictis præfato Willelmo, &c.,
 " petit judicium si idem Radulfus
 " breve istud versus eum manu-
 " tenere possit," &c.

¹ 25,184, sioms.

² L., attendoms; Harl., and
 25,184, entendount.

³ 25,184, et.

⁴ L., demorer.

⁵ The words et vos are omitted
 from L.

⁶ L., ount.

⁷ Harl., entendaunt.

⁸ The replication upon which
 issue was joined was, according to
 the roll, as follows:—" quod ubi
 " prædictus Johannes supponit
 " ipsum Radulfum attornasse
 " præfato Willelmo de servitiis
 " prædictis, &c., ipse Radulfus
 " nunquam se attornavit eidem
 " Willelmo de eisdem servitiis."

The award of the *Venire* and an
 adjournment follow.

Nos. 38, 39.

A.D. 1343. (38.) § A writ of Waste was brought in three vills, Waste in and the waste was assigned in one manor.—*Thorpe* several vills. And alleged, as to one vill, that there was no such vill observe that the writ abated in its entirety. *Gaynesford*. What do you answer as to the rest?—*Thorpe*. If the writ is false in part it is false in the whole.—HILLARY. Since you cannot deny his exception the Court adjudges that you take nothing by your writ.

Avowry. (39.) § E.¹ Bassyngburne heretofore avowed on John¹ See the beginning Chaumberleyn for the reason that the latter held of

¹ For the real names see p. 451, note 12.

Nos. 38, 39.

(38.) ¹ § Bref de³ Wast fut porte en iij⁴ villes, A.D. 1343.
 et assigne en un maner.—*Thorpe*⁵ alleggea, quant Wast
 a une ville, qil y avoit⁶ nul tiele ville en le plusours
 Counte, et demanda⁷ jugement du bref.—*Gayn.* villes.
Et vide le
 Quai⁸ responez de remenant?—*Thorpe.* Si faux en bref abati
 partie faux en tout le bref.—HILL. De puis qe vous en tut.⁹
 ne poiez dedire sa excepcion, agarde la Court qe *Brief,*
 vous ne preignez⁹ rien par vostre bref.¹⁰ 667.]
Judi-
*cium.*¹¹

(39.) ¹² § E.¹³ Bassyngburne avowa autrefoith sur Avowere.
 Johan Chaumberleyn¹⁴ par la resoun qil tient de *Vide prin-*
cipium

¹ From L., Harl., and 25,184. The case appears to be that which is found among the *Placita de Banco*, Easter 17 Edw. III. R^o 185. Nicholas son of Edmund de Ry, knight, brought an action of Waste against Elizabeth late wife of Edmund de Ry, knight, assigning waste in the manors of Wyum (Wyham) and Beaurepeyr (Lincolnshire) a third part of which manors she held in dower of his inheritance. He alleged in his count that the manor of Wyum extended into the villis of Wyum, Otersby, and Ormesby, and mentioned those villis in his writ.

The plea was "quod ipsa non debet ad hoc breve respondere, quia dicit quod, cum prædictus Nicholas per breve suum supponit ipsam fecisse vastum in villis de Otersby et Ormesby, non est aliqua villa in prædicto Comitatu qui [sic] vocatur Otersby, immo quædam villa quæ vocatur Fotersby, nec etiam aliqua villa quæ vocatur Ormesby sine adjectione, videlicet Nunne Ormesby, et Ormesby juxta Fotersby."

Nicholas could not deny this, and so judgment was given "quod prædicta Elizabetha eat inde sine die."

² The marginal note, except the word Wast, is from 25,184 alone.

³ The words Bref de are from L. alone.

⁴ iij is omitted from L.

⁵ L., *Thorpe* il.

⁶ L., navoit, instead of y avoit.

⁷ The words et demanda are from L. alone.

⁸ Quai is omitted from L.

⁹ Harl., and 25,184, pernez.

¹⁰ The words par vostre bref are from L. alone.

¹¹ The marginal note *Judicium* is from Harl. alone.

¹² From L., Harl., 22,552, and 25,184. The case is a continuation of No. 64 of Michaelmas Term 14 Edw. III. According to the record, *Placita de Banco*, Mich. 14 Edw. III. R^o 433, d, the action of Replevin was brought by Thomas son of Henry Chaumberleyn against Stephen de Bassyngburne, knight, and Richard atte Wode.

¹³ L., William.

¹⁴ L., Uleyn.

No. 89.

A.D. 1343. him the manor of B., whereof the place, &c., is parcel,
 above in by homage, fealty, and scutage, and the services of
 Michael. 5*s. per annum*, and he laid the seisin by the hands of
 mas Term their ancestors on either side, and for the homage in
 in the 14th year. arrear he avowed, &c.—*Derworthy* alleged that W.,
 father of W. de Bassyngburne, whose heir he is, gave
 and granted one messuage, and six acres of land, together
 with the same rent of 5*s.* issuing out of the
 same manor, with wardships, marriages, and escheats,
 to Henry Chaumberleyn and A. his wife, and the
 heirs of their two bodies begotten, to hold of him and
 of his heirs by the services of one clove in lieu of all
 services. And we are issue in tail; judgment whether,
 contrary to your ancestor's deed, you can maintain the
 avowry.—*Rokele*. By this deed neither scutage, which
 attracts to itself homage, nor services real are extinguished,
 and inasmuch as the homage, for which
 we avow, is not extinguished, judgment.—*KELSHULLE*.
 Judgment Because you have distrained contrary to your ancestor's
 deed, the Court adjudges that the plaintiff do recover
 his damages assessed by the Court at 20*s.* and that
 you be in Mercy, &c.

No. 39.

luy le maner de B.,² dount le lieu, &c., est parcelle, A.D. 1843.
 par homage, feaute, et escuage, et les services de ^{supra}
 vs.³ par an, et lia seisine par lez meyns lour⁴ ^{Michaelis.}
 auncestres dune part et dautre, et pur lomage arere ^{xliij^o.}
 il avowa, &c.—*Derworthi* alleggea qe W.,⁵ pero W. ^{[Fitz.,}
 de Bassyngburne, qi heir il est, dona et graunta ^{Avowere,}
 un mies, vj⁶ acres de terre, ensemblement ovo
 mesme⁷ la rente de vs. issaunt de mesme le maner,
 ove gardes, mariages, et eschetes, a Henre Chaun-
 berleyn et A. sa femme, et les heirs de lour deux⁸
 corps engendres, a tener⁹ de luy et de ses heirs
 par les services dun clowe de gilofre pur touz
 services. Et nous sumes issue en la taille; jugement
 si countre le fait vostre auncestre puissez lavowere
 meyntener.—*Rokel*.¹⁰ Par ceo fait nest pas¹¹ escuage,
 qe atret¹² a luy homage, ne¹³ services reals esteint,
 et desicome lomage, pur quel nous avowoms, nest
 pas esteint, jugement.—*KELS*. Pur ceo qe vous avez
 destreint countre le fait vostre auncestre, agarde la ^{Judicium.}¹⁴
 COURT qe le pleintif recovere ses damages taxes par
 la COURT a xxs.¹⁵ et vous en la Mercy, &c.¹⁶

¹ The marginal note, except the word *Avowere*, is from 25,181 alone.

² 25,184, G.

³ Harl., south.

⁴ Harl., and 25,184, la meyn les instead of lez meyns lour.

⁵ L., le.

⁶ Harl., viij.

⁷ mesme is omitted from L.

⁸ deux is omitted from 25,184.

⁹ The words a tener are omitted from 25,184.

¹⁰ Harl., *KELL*.

¹¹ pas is from L. alone.

¹² L., retret, qe entrest; Harl., a tort.

¹³ Harl., et.

¹⁴ The marginal note is from Harl. alone.

¹⁵ Harl., south. In L., &c. is substituted for par la COURT a xxs.

¹⁶ This is in accordance with the record. See Y.B. Mich. 14 Edw. III., p. 176, note 1.

No. 40.

A.D. 1343. (40.) § A writ of *Cessavit* was brought.—*Pole.*
Cessavit. Whereas he supposes that we hold the entirety of him
 And observe that on this writ divers issues were taken with respect to the tenancy.
 by certain services as in gross, and as one whole, we do not admit that we hold of him; but we tell you that one moiety is holden by one service as in gross, and the other moiety by another service.—And it was said that he should not have this plea unless he would admit that he held of the demandant, and therefore he said that the demandant's father, by this deed, since the Statute,¹ enfeoffed our father of a moiety to hold to him and his heirs; judgment whether, contrary to the feoffment, you shall be admitted to say that it is holden of you; and, as to the other moiety, your grandfather assigned our services to one E.² to hold in the name of dower, and we attorned to her and are still her tenant; judgment.—*Pulteney.* As to the feoffment, it is not the deed

¹ 18 Edw. I. (*Quia emptores*).

² Joan, according to the record.
 See p. 455, note 11.

No. 40.

(40.) ¹ § Bref fut² porte.—*Pole.* La ou il suppose come un gros, et un entier, nous conussoms⁴ pas que nous tenoms⁵ de luy; mes vous dioms que lun moite est tenu par un service come un gros, et lautre moite par autre service.—Et homme⁶ dit qil navera pas le plee sil ne voleit conustre a tener de luy, par quoi il dit que le pere le demandant, par ceo fait, puis Statut, feffa⁷ nostre pere de la moite a luy et a ses heirs; jugement si, coudre le feffement, serrez resceu a dire que cest tenu de vous; et, quant a lautre moite, vostre aiel assigna nos⁸ services a une E.⁹ a tener en noun de dower, a qi nous sumes attourne et¹⁰ unqore tenaunt; jugement.¹¹—*Pult.* Quant al feffement, nient le fait

A.D. 1348.

*Cessavit.**Et vide**in isto**brevi**divers**issues pris**en droit**de la**tenance.*

¹ From L., Harl., 22,552, and 25,184. In all these MSS. it appears as No. 18. The record seems to be that found among the *Placita de Banco* of Easter Term 17 Edw. III., R^o 152. An action was brought by John son of John de Ralegh of Nettlecombe against John Alayn, in respect of one messuage and 16 acres of land in Stoke-gommer (Stogumber, Somerset) held by certain specified services.

² The marginal note, except the word *Cessavit*, is from 25,184 alone.

³ fut is from L. alone.

⁴ Harl., conissoms.

⁵ L., tener, instead of que nous tenoms.

⁶ 22,552, COURT.

⁷ L., enfeffa.

⁸ 25,184, vos.

⁹ E. is omitted from 25,184.

¹⁰ The words attourne et are from L. alone.

¹¹ According to the roll the pleas, upon which issue was joined, were

" quod ad predictum mesuagium
 " et quatuor acras terræ de præ-
 " dictis tenementis, dicit quod
 " tenementa illa fuerunt in seisinâ
 " prædicti Johannis de Ralegh
 " patris prædicti Johannis filii
 " Johannis, cujus heres ipse est,
 " qui quidem Johannes de Ralegh
 " per chartam suam inde feoffavit
 " quendam Johannem Alayn patrem
 " ipsius Johannis Alayn et quan-
 " dam Flemillam uxorem ejus,
 " tempore domini Edwardi Regis
 " patris domini Regis nunc, &c.,
 " post Statutum *Quia emptores*
 " *terrarum*, &c., habenda et
 " tenenda tenementa illa prædictis
 " Johanni Alayn et Flemillæ et
 " heredibus suis vel assignatis
 " per servitium trium solidorum
 " per annum, &c., et profert hic
 " quandam chartam sub nomine
 " prædicti Johannis de Ralegh
 " patris, &c., quæ hoc testatur,
 " &c. Et petit judicium si idem
 " Johannes filius Johannis admitti
 " debeat ad dicendum tenementa

No. 40.

A.D. 1343. of our ancestor ; and as to the rest he holds of us ; ready, &c.—*Derworthy*. You are not put to answer to the specialty, but the feoffment, without specialty, by itself disproves your fee.—*SHARSHULLE* to *Pulteney*. Do you expect to have two issues on this writ of *Cessavit*, which supposes the tenancy to be one?—*Pulteney*. Yes ; he by his plea puts me to this ; and we tell you that he had nothing by feoffment from our ancestor ; ready, &c. ; and as to the rest he holds of us ; ready, &c., for the assignment of dower is only evidence in abatement of my writ.—Therefore the averment with respect to each parcel was taken separately, and the tenant's statement was entered ; and if the inquest

No. 40.

nostre auncestre; et quant al remenant il tient de nous; prest, &c.—*Derworthi*. Vous nestes pas mys de respoudre al especialte, mes le¹ feffement, sanz especialte, desprove vostre fee a per luy.—*SCHAR.* a² *Pult.* Quidez vous daver ij issues en ceo bref de *Cessarit*, qe suppose la tenaunce estre une.—*Pult.*³ Oil; il⁴ par son plee me mette a ceo; et vous dioms qil navoit rien⁵ del feffement nostre auncestre; prest, &c.; et quant al remenant il tient de nous; prest, &c., qar assignement⁶ de dowere nest forsque⁷ evidence en abatre⁸ de mon bref.—Par quei lavere-ment de lun et le lautre parcelle fut pris several-ment, et le dit le tenaunt entre⁹; et si lenqueste

" illa de alio teneri quam de
" capitali domino, &c. Et quo
" ad residuum prædictorum tene-
" mentorum dicit quod prædictus
" Johannes Alayn pater, &c.,
" tenuit tenementa illa de quodam
" Johanne filio Simonis de
" Ralegh per fidelitatem et servi-
" tium duorum solidorum per
" annum, quæ quidem servitia
" post mortem prædicti Johannis
" filii Simonis assignata fuerunt
" per prædictum Johannem de
" Ralegh filium ejusdem Simonis
" cuidam Johannæ uxori ejusdem
" Simonis tenenda nomine dotis,
" &c., per quam assignationem
" idem Johannes Alayn se attor-
" navit de servitiis prædictis
" eidem Johannæ cui ipse Johannes
" adhuc est intendens de eisdem,
" &c., et sic dicit quod ipse tenet
" residuum illud de prædicta
" Johanna ex assignatione præ-
" dicta et non de prædicto Johanne
" filio Johannis. Et de hoc ponit
" se super patriam. Et Johannes
" filius Johannis similiter.

" Et idem Johannes quoad
" prædicta mesuagium et quatuor
" acras terræ de quibus prædictus
" Johannes Alayn supponit prædic-
" tum Johannem de Ralegh
" patrem, &c., feoffasse prædictum
" Johannem Alayn et Flemillam
" in forma prædicta post prædic-
" tum Statutum, &c., dicit quod
" iidem Johannes Alayn et
" Flemilla nihil habuerunt in
" tenementis illis ex feoffamento
" prædicti Johannis de Ralegh.
" Et hoc petit quod inquiratur per
" patriam. Et Johannes Alayn
" similiter."

¹ L., al.

² The words *SCHAR.* a are omitted from 22,552.

³ 22,552, *Der.*

⁴ il is omitted from L.

⁵ rien is omitted from 25,184.

⁶ 25,184, l'assignement.

⁷ L., gen. The word is omitted from Harl.

⁸ 22,552, and 25,184, a travers, instead of en abatre.

⁹ entre is omitted from L.

No. 40.

A.D. 1343. passes for the demandant, the tenancy will be, as it were, admitted to be in gross.

No. 40.

passee¹ pur le demandant donques serra la tenaunce A.D. 1343.
come conu estre² un gros.³

¹ L., passa.

² L., conu come, instead of come conu estre.

³ There was a verdict at *Nisi prius* "quod Johannes Alayn tenet "tenementa infra contenta, præter "unum mesuagium et quatuor "acras terræ, de Johanna quæ fuit "uxor Simonis de Ralegh, prout "idem Johannes Alayn in re- "spondendo asserit, et non de "prædicto Johanne filio Johannis "de Ralegh, et quoad prædicta "mesuagium et quatuor acras "terræ, quod prædicti Johannes "Alayn et Femilla uxor ejus "infra nominati nunquam aliquid "habuerunt in tenementis illis ex "feoffamento prædicti Johannis "de Ralegh patris prædicti "Johannis filii Johannis."

"Et quia inspecto recorde "prædicto et veredicto inde per "præfatos Justiciarios hic misso "videtur Curie hic quod prædicti "juratores ad captionem prædictæ "juratæ minus sufficienter ex- "aminati fuerunt, per quod "Justiciarii hic ad judicium inde "reddendum procedere non "possunt," new jury process is to issue.

The second verdict at *Nisi prius* was "quod quoad prædicta "mesuagium et quatuor acras "terræ, de quibus prædictus "Johannes Alayn supponit præ- "dictum Johannem de Ralegh "patrem, &c., feoffasse prædictum "Johannem Alayn patrem, &c., "et Femillam uxorem ejus in "feodo simplici post prædictum "Statutum, iidem Johannes Alayn

"pater, &c., et Femilla nihil "habuerunt in tenementis illis "ex feoffamento prædicti Johannis "de Ralegh patris, &c. Et dicunt "quod eadem mesuagium et "quatuor acræ terræ tenentur "de prædicto Johanne filio Johan- "nis per homagium, fidelitatem, "et per servitium duorum soli- "dorum per annum. Dicunt "etiam quod prædictus Johannes "Alayn nunc tenens, &c., tenet "totum residuum tenementorum "prædictorum de Johanna quæ "fuit uxor Simonis de Ralegh, "prout idem Johannes placitando "allegavit, et non de prædicto "Johanne filio Johannis. Et "dicunt quod residuum illud "tenetur per homagium, fidelita- "tem, et servitium novem soli- "dorum per annum."

The judgment which follows is:—"Quia convictum est per "juratam prædictam quod præ- "dictus Johannes Alayn tenet "prædicta mesuagium et quatuor "acras terræ tantum de prædicto "Johanne filio Johannis per "homagium fidelitatem, et servi- "tium duorum solidorum per "annum, et quod eadem servitia "eidem Johanni filio Johannis a "retro fuerunt per sex annos, "quæ redditum et ejus arreragia, "videlicet duodecim solidos, idem "Johannes Alayn ante judicium "inde redditum solvit hic in "Curia prædicto Johanni filio "Johannis, et invenit securitatem "solvendi redditum illum prædicto "Johanni filio Johannis et here- "dibus suis per annum, videlicet

No. 41.

A.D. 1343. (41.) § The Prior of the Trinity of London brought a writ of Annuity against the Prior of Our Lady of Southwark in respect of 5*s. per annum*, and laid his count on the ground of prescription.—*Gaynesford*. They are people of Holy Church both on one side and on the other; and therefore the Court will not take cognisance of the plea without a lay contract.—*Thorpe* made *profert* of a specialty which purported that by ordinance of the Bishop of Winchester the Canons of Southwark had granted 5*s.* out of a certain church in London to the Canons of the Trinity, to hold to them, &c., for ever, And the jury came, by judgment, from that County in which the Original Writ was brought, &c.

No. 41.

(41.) ¹ § Le Priour de la Trinite de Loundres A.D. 1343. porta bref Dannuite vers le Priour Nostre Dame de Southwerke de vs.³ annuels, et lia son count par prescripcion.⁴—*Gayn.* Ils sont gentz de Seint Eglise dune part et dautre; par quei Court ne voet⁵ conustre sanz⁶ lai contract.⁷—*Thorpe* mist avant especialte qe voleit qe par ordinaunce⁸ del Evesqe de Wyncestre les Chanouns de Southwerke avoient graunte dun certain eglise en⁹ Loundres vs. as Chanouns de la Trinite, a eux, &c., a tous jours,

Annuite,
ou le bref
fut porte
en un
Counte, et
la Priourie
dount les
Priours
payerent
fut en
autre
Conte, et
le title fut
traverse.
Et paye
[sic] vynt,
par

"Johannem de Crukerne et
"Ricardum Beynyn de eodem
"Comitatu, qui quidem Johannes
"de Crukerne obligavit terras et
"tenementa sua in Crukerne
"et prædictus Ricardus terras et
"tenementa sua in Lypene
" (Lopen) districtioni prædicti
"Johannis filii Johannis et here-
"dum suorum, si redditus ille a
"retro esse contigerit, ideo præ-
"dictus Johannes Alayn retineat
"tenementa illa, et idem Johannes
"filius Johannis in misericordia
"pro falso clamore versus eundem
"Johannem de residuo tenemen-
"torum prædictorum."

¹ From L., Harl., and 25,184, but corrected by the record *Placita de Banco*, Easter 17 Edw. III. R^o 54. It there appears that the action was brought by the Prior of the Church of the Holy Trinity, London, against the Prior of the Church of St. Mary the Virgin Southwark, in respect of arrears of an annual rent of 10s.

² The marginal note except the word Annuite is from 25,184 alone.

³ Harl., south.

⁴ The count or declaration was

according to the record "quod
"quidam Ricardus de Wymbysshe, Counte en
"quondam Prior Ecclesiæ Sanctæ quel
"Trinitatis, Londoniarum, præde-
"cessor prædicti Prioris ecclesiæ
"prædictæ qui nunc est, fuit
"seisitus de prædicto annuo
"redditu decem solidorum, ut de
"jure ecclesiæ Sanctæ Trinitatis
"Londoniarum, per manus Prioris
"Ecclesiæ beatæ Mariæ de Suth-
"werke, prædecessoris prædicti
"Prioris beatæ Mariæ qui nunc
"est, tempore pacis, tempore
"domini Edwardi Regis patris
"domini Regis nunc et
"similiter omnes Priores Ecclesiæ
"Sanctæ Trinitatis prædecessores,
"&c., seisiti fuerunt de annuo
"redditu prædicto per manus
"Priorum Ecclesiæ beatæ Mariæ
"prædictæ prædecessorum, &c.,
"usque viginti annos ante diem
"impetrationis brevis sui."

⁵ L., deit.

⁶ sanz is omitted from L.

⁷ The record:—"nisi aliquid
"speciale factum Curie ostenderit
"qualiter annuus redditus præ-
"dictus sumpsit originem."

⁸ L., ordinacioun.

⁹ L., de.

No. 41.

A.D. 1343. "*sicut charta prædicti Episcopi testatur, his testibus,*" without determining whose seal was put to it.—*Gaynesford*. This deed cannot be a title, because no certain person speaks in the deed, and it is not testified whose seal was put to it; judgment.—*Thorpe*. It is the seal, and the deed is the deed of the Convent, and, in addition, we take title by prescription; judgment.—*HILLARY*. Answer.—*Gaynesford*. Not seised from all time; ready, &c.—And the other side said the contrary.—*Stouford*. Although the parties be at issue, it is now necessary for the Court to see whether it have warrant on such an insufficient deed to take the issue, and I say that by law it cannot do so.—*Pulteney*. We pray a *Venire facias* to the Sheriffs of London, for the Original writ is there.—*Gaynesford*. No one can know anything of a seisin had by the hand of the Prior of Southwark but persons of the County in which the Priory is, for suppose the Original had been in Northumberland, and the Priory in Kent, how would persons in Northumberland know of a payment made in Kent?—*SHARDELOWE*. In the case in

No. 41.

sicut charta prædicti Episcopi testatur,¹ *his testibus*,² A.D. 1348. sanz determiner qi seal fut mys.³—[*Gayn.* Ceo fait ne poet estre tittle, qar nule certeine persone parle en le fait, ne il nest pas tesmoigne qi seal est mys]⁴; jugement.—*Thorpe.* Cest le seal, et le fait est le fait le Covent, et nous pernomms ovesqe ceo tittle de prescripcion; jugement.—*HILL.* Respondez.—*Gayn.* Nient seisi de tut temps; prest, &c.—*Et alii e contra.*—*Stouf.* Coment qe parties soient a issue, ore fait a veer pur la Court si ele eit garraunt sur tiel fait⁵ meins sufficeaunt de prendre lissue, et jeo die de ley ele ne le poet faire.—*Pult.* Nous prioms *Venire facias* a Vicountes de Loundres, qar la est loriginal.—*Gayn.* De seisine eu par la mayn le Priour de Southwerke⁶ nul homme poet saver⁷ forsque ceux del Counte ou la Priorie est, qar jeo pose qe loriginal fut en Northumberland,⁸ et la Priorie en Kent, coment saveront ceux de Northumberland de paiement fait en Kent?—*SCHARD.* En le cas ou⁹

¹ *testatur* is from L. alone.

² L., &c., instead of *his testibus*.

³ According to the record:—
 “profert hic quoddam scriptum
 “ad modum cirographi confectum,
 “in quo continetur quod per
 “dispositionem domini Ricardi
 “Wintoniensis Episcopi, et per
 “concessionem ejus utilitati præ-
 “dictarum ecclesiarum Sanctæ
 “Trinitatis Londoniæ et Sanctæ
 “Mariæ de Suthwerke ita pro-
 “spectum fuit ut ipsa ecclesia
 “Sanctæ Trinitatis in ecclesia
 “Sanctæ Mildrithæ et in capella
 “Sanctæ Mariæ Londoniæ, in qui-
 “bus ante duodecim denarios
 “annuos habebat, extunc decem
 “solidos annuos haberet a canoni-
 “cis Sanctæ Mariæ de Suthwerke
 “. ita quod canonici
 “ecclesiæ Sanctæ Trinitatis nihil

“inde amplius quam decem
 “solidos exigere possent, et
 “ecclesia Canoniorum Sanctæ
 “Mariæ de Suthwerke teneret
 “ipsam ecclesiam Sanctæ Mil-
 “drithæ et illam capellam Sanctæ
 “Mariæ Londoniæ in perpetuum
 “de ipsis canonicis Sanctæ
 “Trinitatis, qui ad hoc suum
 “assensum concorditer præbuer-
 “unt per memoratam pensionem
 “inde annuatim solvendam. Et
 “petit quod respondeat,” &c.
 There is no mention of the seal in
 the record.

⁴ The words between brackets
 are omitted from Harl.

⁵ fait is omitted from L.

⁶ L., Southwerke de Loundres.

⁷ L., salver.

⁸ Harl., Northumbrelond.

⁹ L., qe.

Nos. 42-47.

A.D. 1343. which you are we shall make the inquest where the Original is because the annuity is to be paid for a church which is in the same County.¹

¹ For No. 42 of the old editions see p. 262 (No. 4); for No. 43 p. 346 (No. 22); for No. 44 p. 354 (No. 23); for No. 45 p. 272 (No. 4, *ad fin.*); for No. 46 p. 382 (No. 24); and for No. 47 p. 294 (No. 10).

Nos. 42-47.

vous estes nous lenquerroms la ou loriginal est, pur A.D. 1343.
 ceo qe lannuite est a paier pur une eglise qest en
 mesme le Counte.¹

¹ The words of the record, after the joining of issue, are "et quia ecclesia prædicta Sanctæ Mil-
 "drithæ, et capella Sanctæ Mariæ,
 "pro quibus annuus redditus præ-
 "dictus exigitur sunt infra Civita-
 "tem Londoniarum et similiter
 "breve originale impetratum fuit
 "Vicecomitibus Londoniarum, præ-

"ceptum est eisdem Vicecomitibus
 "quod venire faciant," &c. Accord-
 ing to the record there was a
 verdict and judgment for the
 plaintiff Prior, and an award of
 execution by *Elegit* followed by a
 writ of Error to the King's Bench.

The reports of Easter Term end
 with this case in the MSS.

TRINITY TERM
IN THE
SEVENTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

TRINITY TERM IN THE SEVENTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

No. 1.

A.D. 1343. (1.) § In the Assise of Darrein Presentment which
Note : Theobald de Greneville brought heretofore¹ against
Assise of Jôhn de Ralegh and Amy his wife, a verdict passed
Darrein as to damages at *Nisi prius*, and the finding of the
Present- jury was returned in Easter Term last past, after the
ment taken in respect of damages after the record on
the principal matter had been sent into the King's Bench. And now he came, this Term, and
had been sent into the King's Bench ; brought a writ to STONORE, directing him to send this
and, because the process was not continued, a day, and no day was given over to the parties ;
the COURT would not send this as a record. . wherefore, if you wish to attain your purpose, bring
us a writ directing that the record be sent notwithstanding.²

¹ See above, Hil. 17 Edw. III. No. 12, and Easter 17 Ed. III. No. 4.

² That the record was sent is shown above p. 63, note 9.

DE TERMINO TRINITATIS ANNO REGNI REGIS
EDWARDI TERTII A CONQUESTU SEPTIMO
DECIMO.¹

No. 1.

(1.) ² § Thebaud Greneville en Lassise de Derreyn⁵ A.D. 1343. Presentement qil porta autrefoith vers Johan de Ralegh⁶ et Amye sa femme, qe passa sur damages par *Nisi prius*, et lenquest retourne le terme de Pasche⁷ derreyn passe, apres ceo⁸ qe le recorde fut maunde en Baunk le Roi par voie derroure, issint qe la COURT adonques ne voleit sur les damages rendre jugement, mes luy disoient qil suesit⁹ qe cele parcelle del recorde fut maunde en Baunk le Roi. Et ore il vint cest Terme, et porta bref a Ston., qil maundast¹⁰ cel verdit pris¹¹ sur damages en Chauncellerie.—Ston.¹² Ceo ne poms pas: qar la chose est discontinuee, qar cest autre Terme les parties avoient jour, et nul jour done outre as parties; par quai, si vous voillez aver vostre purpos, portez nous bref qe *non obstante* qe le recorde soit maunde.

*Nota:*³
Assise de Derrein
Presentement pris de damages apres ceo qe le recorde sur le principal fut mande al Bank le Roi; et, pur ceo qe le proces nest pas continuee, COURT ne voleit pas cel come recoril.⁴

¹ The reports of this Term are from the Lincoln's Inn MS., the Harleian MS., No. 741, the Additional MS. in the British Museum numbered 25,184, the Cambridge MS., and, as to a portion of one case, from the Additional MS. numbered 22,552. In 25,184, the word *SANCTÆ* is inserted before *TRINITATIS*.

² From L., Harl., 25,184, and C.

³ L., Verdit. The word is omitted from Harl.

⁴ The words of the marginal

note subsequent to Presentement are from 25,184 alone.

⁵ Harl., here and elsewhere, drein.

⁶ All the MSS. except L., Raly.

⁷ Harl., and 25,184, Paske.

⁸ The words *apres ceo* are omitted from L.

⁹ L., *suffit*; 25,184, *ne seit*; C., *sue fet*.

¹⁰ L., *maunda*.

¹¹ *pris* is omitted from L.

¹² 25,184, *Setone*.

Nos. 2, 3.

A.D. 1343. (2.) § Two parceners brought a Formedon. The Formedon for two parceners. By reason of the tenant's default, because one of the parceners did not sue on the first day, the *Cape* issued in respect of a moiety. And this process is not good, according to the opinion of the Court, because a *Cape* shall issue in respect of the whole.

(2.) § Two parceners brought a Formedon. The tenant made default. One of the demandants did not come; wherefore a *Summonceas ad sequendum simul* issued, and the Grand *Cape* issued, in respect of a moiety only, returnable now. The tenant appeared. The summons *ad sequendum simul* was testified, and she did not come.—*R. Thorpe*. This process is discontinued: for heretofore the *Cape* issued in respect of a moiety only, whereas before severance process ought always to be made in respect of the whole.—*Pole*. Now all is well, because suit is given for us in respect only of a moiety which is taken; so the process is good.—*R. Thorpe*. That which was previously bad, and without warrant, cannot be made good now.—*HILLARY*. You say what is true; the process must be commenced anew.—And so note that, in such a case, it would be necessary to sue a *Cape* anew in respect of the entirety, and, at the same time, a *Summonceas ad sequendum simul*.—*R. Thorpe*. Nevertheless, if the Court can permit it, and the demandant wishes it, count against us in God's name.—*HILLARY*. You are acting wisely.

Continuation of an Ejectment from Wardship. (3.) § Gerard de Braybroke heretofore¹ brought a writ of Ejectment from Wardship against Joan late wife of Hugh de Bretvyll,² and one John. And Joan then pleaded to issue to the country. John did not plead, but upon Joan's plea it was entered upon

¹ See above Easter, 17 Edw. III., No. 19, where the record is cited.

² All the old editions, and all

the MSS. of Year Books, except L., wrongly give this name as Grenville.

Nos. 2, 3.

(2.)¹ § Deux parceners porterent Forme de Doun. A.D. 1343.
 Le tenaunt fist default. Lun des² demandants³ ne Fourme de
 vint pas; par quai *Summoneas ad sequendum simul* ij parcen-
 issit, et Graunt *Cape* issit forsque⁵ de la moite re- ers. Par
 tournable a ore. Le tenaunt vint. La Somons defaute du
 tesmoigne *ad sequendum simul*, et ele ne vint pas. tenant,
 —*R. Thorpe*. Ceo proces est discontinue: qar autre- pur ceo
 foith le *Cape* issit forsque de la moite, ou devant la que lun ne
 severaunce tut temps proces se duist faire de lentier. suyt pas,
 —*Pole*. Ore est tut bien,⁶ qar nostre suyte est al primer
 done forsque de la moite quel est pris; issint le jour, *Cape*
 proces boun.—*R.⁷ Thorpe*. Ceo qe devant fut malveys,⁸ issit hors
 et saunz garraunt, ne poet pas ore estre fait boun. Et cel
 —*HILL*. Vous dites verite; il covient comencer le proces nest
 proces de novel.—*Et sic nota* qil covendreit,⁹ en tiel par
 cas, suyre de rechief *Cape* de lentier, et *Summoneas* qe *Cape*
ad sequendum simul ovesqe.—*R. Thorpe*.¹⁰ Nepurquant, [Fitz.,
 si la¹¹ Court le poet soeffrer, et la demandante le¹² *Graund*
 voille, counte devers nous de par Deux.¹³—*HILL*. *Cape*, 14.]
 Vous faites sagement.

(3.)¹⁴ § Gerard Braybroke autrefoith porta bref *Residuum*
 Dengettement¹⁵ de Garde vers Johane qe fut la Dengette-
 femme H. Bretvyll, et un¹⁷ Johan. Et¹⁸ Johane ment de
 adonques pleda a issue de pays. Johan ne Garde.¹⁶
 pleda pas, mes sur le plee Johane en roulle fut

¹ From L., Harl., 25,184, and C.

² The words of the marginal note subsequent to Fourme de Doun are from 25,184 alone.

³ des is omitted from L.

⁴ L., demandant.

⁵ forsque is omitted from L.

⁶ L., boun.

⁷ R. is omitted from L.

⁸ L., malveys.

⁹ L., covendra.

¹⁰ The words *R. Thorpe* are omitted from 25,184.

¹¹ la is from L. alone.

¹² le is omitted from L. and Harl.

¹³ 25,184, Dieu.

¹⁴ From L., Harl., 25,184, and C.

¹⁵ The marginal note is from L. In the other MSS. it is simply Engettement de Garde.

¹⁶ All the MSS. except L., Engettement, instead of bref Dengettement.

¹⁷ un is omitted from L.

¹⁸ Et is omitted from 25,184.

No. 4.

A.D. 1348. the roll "*quod prædictus Gerardus hoc prætendit verificare, et prædicti Johanna et Johannes similiter.*"¹—And they have a day now.—*R. Thorpe* alleged that the process was discontinued, because a *Venire facias* had issued as upon the issue joined by both defendants, whereas one did not plead.—*W. Thorpe*. There is no discontinuance, for the parties have a day by the roll.—*HILLARY*. It appears to us that there is no discontinuance, because the parties have a day, and one often sees that, after count counted, without any further pleading, a day is given to the parties, and so it may be in this case; and therefore plead, if you will.—*R. Thorpe*. In that case a day is given in the words "*et super hoc dies datus est,*" &c.; but in this case the day is given on the issue joined.—*HILLARY*. Answer, if you will, for you will not attain your purpose.—*R. Thorpe* pleaded, on behalf of John, that he came in aid of Joan who had pleaded, and upon that they took issue.²—And they were in doubt whether the first *Venire facias* could serve for the whole, or not.—See the beginning above, in Easter Term.

Re-
summons
in respect
of parol
removed
out of the
Liberty of
Durham,
which re-
mained in
this Court,
and was
by Protec-
tion with-
out day.

(4.) § The parol in a Formedon was removed out of the Liberty of Durham into the Bench inasmuch as descent to the value of the demand was surmised against the demandant as having descended to him in fee simple in foreign counties, upon which issue was joined to a

¹ This is not in accordance with any of the pleadings in the cause which are entered upon the roll of

the Justices of the Common Bench.

² This in accordance with the roll. See note, p. 335.

No. 4.

entre *quod prædictus Gerardus hoc prætendit verificare*, A.D. 1848. et *prædicti Johanna et Johannes similiter*.—Et ore ount jour.—*R. Thorpe* alleggea qe le proces est discontinue, qar *Venire facias* est issu come a la mise de lun et lautre defendauntz, ou lun ne pleda pas.—[*W.*] *Thorpe*. Discontinuaunce ny¹ ad pas, qar parties ount jour par roulle.—*HILL*. Il nous² semble qe ceo nest pas discontinue, qar les parties ount jour, et homme veit sovent qapres counte counte, saunz asqun plee plus, homme doune³ jour as parties, et si poet estre⁴ icy; et pur ceo pledez si vous voillez.—*R. Thorpe*. La doune homme jour⁵ “*et super hoc dies datus est*,” &c.; mes icy le⁶ jour est done sur la mise jointe.⁷—*HILL*. Respondez si vous voillez, qar vous⁸ naverez pas vostre purpos.—*R.*⁹ *Thorpe* pleda, pur Johan, qil vint en eide de Johane qavoit plede, et sur ceo pristrent issue.—Et sont en awere si¹⁰ le primer *Venire facias* purra servir,¹¹ ou noun,¹² a tout.¹³—*Vide principium supra, Pasche*.¹⁴

(4.)¹⁵ § Hors de la Fraunchise de Duresme¹⁷ parole fut remue en Baunk en un Formedoun par taunt qe descente a la value de la demande fut sourmys al demandant qe luy fut descendu en fee simple en foreins countes, sur quai enqeste se joint,

Resomons de parole remue hors de la Franchise de Duresme, qe demura ceinz, et [par] Protection sanz jour.¹⁶

¹ L., nount; 25,184, y.

² L., ne.

³ 25,184, dount.

⁴ The words *si poet estre* are omitted from L.

⁵ The word *jour* is omitted from 25,184. After it there are inserted in C., the words *as parties et si poet*, which appear to be a mere repetition of the clause above.

⁶ *le* is omitted from L.

⁷ 25,184, *yoint*.

⁸ *vous* is omitted from 25,184.

⁹ *R.* is omitted from L.

¹⁰ L., *lequele*.

¹¹ L., *sauver*.

¹² The report ends here in L.

¹³ The words *a tout* are omitted from 25,184.

¹⁴ The words *supra Pasche* are from Harl. alone.

¹⁵ From L., Harl., 25,184, and C.

¹⁶ The marginal note is, except the word *Resomons*, from 25,184 alone.

¹⁷ L., *Durham*.

No. 5.

A.D. 1348. jury, and afterwards a *Venire facias* issued from the Bench. The parol remained without day by a Protection. The demandant now, after the day had passed, prayed a Resummons against the tenant to be directed to the Sheriff of Northumberland, in which County the Liberty of Durham is, or else to the Bishop.—*Blaykeston*. The Bishop is Earl Palatine, wherefore neither Sheriff nor any one else ought to meddle in his Liberty, except in his defence, nor ought the King to send to him as to a minister to effect a Summons.—*HILLARY*. Nor ought he himself to have back any jurisdiction, since he cannot try the matter.—*Quere*, &c.

Waste. (5.) § Robert Assheley¹ brought a writ of Waste against one Alice,¹ supposing that she held for her life by virtue of a fine levied, &c., between one J.,¹ deforciant, and this woman and her husband, to them and to the heirs of the husband, the plaintiff's grandfather, whose heir he is.—*Pulteney* took exception to the writ on the ground that it did not suppose that the tenant held

The plaintiff made himself heir to his grandfather, against which it was alleged that his father

¹ For the real names, &c., see p. 475, notes 13 and 15.

No. 5.

et apres *Venire facias* issit hors du Baunk.¹ La A.D. 1348.
 parole par² Proteccion demura saunz jour. Le de-
 mandant ore, apres le jour passe, pria Resomons
 vers le tenant al Vicounte de Northoumberlounde,³
 deinz quel counte la Fraunchise de Duresme⁴ est,
 ou autrement al Evesqe.—*Blayk*. Levesqe est Counte
 de Paleys,⁵ par quei⁶ Vicounte ne nul autre se deit
 meller⁷ deinz sa Fraunchise, si en defence de luy
 noun, ne le Roi ne deit⁸ pas maunder a luy come
 a ministre de faire Somons.—*HILL*. Ne il ne deit
 pas mesme aver⁹ jurisdiction arrere puis qil ne le¹⁰
 put pas trier.¹¹—*Quere, &c.*¹²

(5.)¹³ § Robert Assheley¹⁴ porta bref de Wast vers Wast.
 une Alice, supposant qele tient a sa vie par fyn Le pleintif
 leve, &c., entre un J., deforcer, et ceste femme et se fit heir
 soun baroun, a eux et a les heirs le baroun, aiel a son aiel,
 le pleintif, qi heir il est.¹⁵—*Pult.* chalangen le bref contre
 de ceo qil ne¹⁶ suppose [pas qe le¹⁷ tenant tient¹⁸]¹⁹ quei est
 pere allegge qe soun

¹ L., Baunk le Roi.

² par is omitted from C.

³ Harl., Northumbrelonde.

⁴ L., Durham.

⁵ L., countrefeilais, iustead of Counte de Paleys.

⁶ C., qai.

⁷ L., medler; Harl., mellire.

⁸ 25,184, le deit.

⁹ aver is omitted from 25,184.

¹⁰ le is omitted from L., and 25,184.

¹¹ L., put pas estre tric, iustead of le put pas trier.

¹² The words *Quere, &c.* are from L. alone.

¹³ From L., Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Trin. 17 Edw. III. R^o 39. It there appears that the action was brought by Bartholomew son of Richard de Asshele against

John de Mundene and Elena his wife, in respect of tenements in Rikemesworthe (Rikmansworth, Herts).

¹⁴ L., Ayseley; 25,18, Asseby.

¹⁵ According to the writ and count or declaration on the roll, John and Elena held the tenements for her life "per finem inter
 "Robertum de Asshele et præfa-
 "tam Elenam tunc uxorem ejus,
 "querentes, et Phillipum Ungot,
 "deforciantem, habenda eisdem
 "Roberto et Elenæ et heredibus
 "ipsius Roberti patris prædicti
 "Ricardi patris prædicti Bar-
 "tholomæi, cujus heres," &c.

¹⁶ ne is omitted from 25,184.

¹⁷ L., qele est, iustead of qe le.

¹⁸ tient is omitted from L., and C.

¹⁹ The words between brackets are omitted from 25,184.

No. 5.

A.D. 1348. by lease or render from any one.—The exception was not allowed.—Then he said: Whereas the plaintiff supposes that his grandfather, whose heir he is, &c., and makes himself son and heir of R.,¹ we tell you that R.,¹ whom he alleges to be his father, was born before wedlock; judgment whether he ought to be admitted as heir to the grandfather through R.¹—*Thorpe*. We tell you that on such a day, in such a year, and at such a place in London, the plaintiff's grandfather married one K.,¹ after which marriage R.¹ was born in London between them; judgment—*Grene*. The law does not put us to answer as to the marriage, nor on that point have we to make a traverse; but we will aver in Middlesex, where the land is, that he was born before the marriage, and we tell you that he was born where the land is.—*Thorpe*. The birth and the issue came from me, for I first alleged it, and, therefore, where I wish to say that the birth was, there shall it be tried.—*Pulteney*. Suppose this were alleged in an Assise, would it not be tried where the land is, and not adjourned into the Bench?

¹ For the real names, &c., see p. 475, note 15.

No. 5.

dascun² lees ne rendre.—*Non allocatur*.—Puis il dit A.D. 1343.
 qe la ou il suppose qe soun aiel, qi heir il est, &c.,
 et se fait fitz et heir³ R., nous vous dioms qe R.,
 qil⁴ dist⁵ estre soun pere, nasquit avant les esposailles⁶;
 [jugement si come heir al aiel par my R. deyve
 estre resceu.⁷—*Thorpe*. Nous vous dioms qe tiel jour,
 au, et lieu en Loundres, laiel le pleintif esposa une
 K., puis queux esposailles R. nasquit]⁸ en Loundres
 entre eux; jugement.—*Grene*. A les esposailles ley
 ne nous⁹ mette pas a respondre, ne sur cel¹⁰ point¹¹
 ne sumes¹² pas a traverser; mes voloms averer en
 Middelsex, ou¹³ la terre est, qil nasquit avant¹⁴ les
 esposailles, et vous dioms qil nasquit ou la terre
 est.—*Thorpe*. Le¹⁵ nestre et lissue vint de moi, qar
 primes¹⁶ lay¹⁷ allegge, par quei ou¹⁸ jeo voille dire
 qe¹⁹ le nestre²⁰ fut²¹ ceo serra trie.—*Pult.*²² Jeo
 pose qe ceo fut allegge en Assise, ne serra il trie
 ou la terre est, et noun pas ajourne²³ el²⁴ Baunk?

¹ The marginal note, except the word *Wast*, is from 25,184 alone.

² L., and C., dascun.

³ The words *et heir* are from L. alone.

⁴ Harl., *qi il*.

⁵ L., *se fait*.

⁶ The words *avant les esposailles* are omitted from C.

⁷ According to the roll the plea was "*quod cum prædictus Bartholomæus supponit prædictum finem de prædictis tenementis levatum fuisse inter prædictum Robertum de Asshele avum, &c., et præfatam Elenam tunc uxorem ejus, querentes, et prædictum Phillipum Ungot, deforciatam, habendis eidem Roberto et Elenæ et heredibus ipsius Roberti, et sic jure hereditario prædicta tenementa . . . descendisse de prædicto Roberto avo, &c., eidem Ricardo de*

Asshele ut filio et heredi, &c.,

"patri prædicti Bartholomæi,

"&c., idem Ricardus natus

"fuit extra quæcunque desposalia.

"Et hoc parati sunt verificare,

"unde petunt judicium," &c.

⁸ The words between brackets are omitted from L. and C.

⁹ 25,184, *me*.

¹⁰ *cel* is omitted from 25,184.

¹¹ 25,184, *pointz*.

¹² 25,184, *soms*.

¹³ L., *la ou*.

¹⁴ L., *deynz*.

¹⁵ C., *il*.

¹⁶ L., *primis*.

¹⁷ L., *avoms*; C., *lei*.

¹⁸ *ou* is omitted from L.

¹⁹ *qe* is from L. alone.

²⁰ 25,184, *nostre*.

²¹ *fut* is from L. alone.

²² L., *Grene*.

²³ Harl., *adjourne*.

²⁴ L., and C., *en*.

No. 6.

A.D. 1348. —*Thorpe*. The case is not similar.—*Grene*. If I allege a deed without any date, and it is denied, I shall allege, at my peril, the place at which the deed was executed. So, in the matter before us, the allegation of birth before the marriage came from me; and, therefore, where I wish to allege it, there, at my peril, it shall be tried.—*STONORE*. You are at one as to the marriage.—*Thorpe*. If he were at one with us as to the marriage, he would not disable us.—*Grene*. When I say that he was born before the marriage the allegation as to the birth comes from me; and therefore the jury will naturally come from the place where I say that he was born.—*HILLARY*. You will have the jury from the place where the land is.—And he did so.

Note that
the purchaser,
pending
suit on a
statute
merchant,

(6.) § An attorney came to the bar, and showed that the land of his principal, who was a purchaser after the making of a statute merchant, was by extent delivered to the recognissee at too low an extent, and his purchase was made while suit on the statute merchant was pending, but, because he was not a

No. 6.

—*Thorpe*. *Non est simile*.—*Grene*.¹ Si jeo allegge A.D. 1343.
fait saunz date qest dedit, jeo alleggeray a moun
peril ou le fait se fist. *Sic in proposito* le nestre²
devant les esposailles vint de moi; par quei la ou
jeo voille allegger³ a moun peril la⁴ ceo⁵ serra
trie.—*Ston*. Vous estes a un des esposailles.—*Thorpe*.
Sil fut a un ove nous des esposailles, il nous fra
pas nounable.—*Grene*. Quant jeo die qil nasquit
[avant⁶ les esposailles le nestre vint de moi; par
quei naturelement ou jeo die qil nasquit]⁷ pais
vendra.—*HILL*. Vous averez pais ou la terre est.—
Et ita fecit.⁸

(6.)⁹ § Un attourne vint a la barre, et moustra *Nota qe le*
qe la terre son mestre, qe fut purchaceour¹⁰ puis *purchace-*
un estatut marchaunt fait, fut livre par estente al *our, pen-*
reconisse¹¹ par¹² trop bas estente,¹³ et soun purchase *dant la*
fut fait pendaunt la suyte, mes, pur ceo qil ne fut *suite sur*
statut marchant.

¹ L., *Pult*.

² 25,184, nostre.

³ allegger is from L. alone.

⁴ la is from L. alone.

⁵ 25,184, ne.

⁶ 25,184, devant.

⁷ The words between brackets are omitted from C.

⁸ The replication and issue are entered on the roll, as follows:—

“ Et Bartholomæus dicit quod
“ prædicti Johannes et Elena
“ ipsum ab actione sua per hoc
“ excludere non debent, quia
“ dicit quod prædictus Ricardus
“ de Asshele, pater, &c., natus
“ fuit et procreatus inter prædic-
“ tum Robertum, avum, &c., et
“ prædictam Elenam, tunc uxorem
“ ipsius Roberti, infra desponsalia
“ inter ipsum Robertum et prædic-
“ tam Elenam tunc uxorem ejus
“ celebrata. Et hoc petunt quod
“ inquiratur per patriam. Et

“ prædicti Johannes et Elena
“ similiter. Ideo præceptum est
“ Vicecomiti quod venire faciat,”
&c. The Sheriff (in the absence
of any statement to the contrary)
would necessarily be the Sheriff of
the county in which the action was
brought and the lands were.

After some adjournments John
made default, and Elena was
thereupon admitted to defend her
right. The above pleadings were
then repeated and there was a
new award of *l'enire* to the
Sheriff of the same county, and
the jurors were to viêw the
tenements in which waste was
alleged.

⁹ From L., Harl., 25,184, and C.

¹⁰ Harl., purchase.

¹¹ L., reconuse; C., recognise.

¹² L., et.

¹³ Harl., existence.

No. 7.

A.D. 1343. party he could not have a re-extent. And he made his suggestion further that the money was levied, and prayed a *Scire facias* to account.—STONORE. You say that the recognissee has levied the money; we are apprised by record that he has not held for so long a time that he could have levied it, and if he has improved the land, and levied more, what is that to you? And he has yet to have his costs and charges.—*The Attorney*. Sir, all these matters will come by way of answer in the account.—HILLARY. You are talking in vain, &c.

Account
against
Receiver.
Cogni-
sance of
the plea
was
prayed
inasmuch
as the
receipt
had been
partly
within the

(7.) § Account against Receiver in Lynn and South Lynn. The Bailiff of South Lynn, by *Rokele*, prayed cognisance of the plea, inasmuch as the plaintiff was a Burgess, and cognisance of contracts, &c., was granted by the King's charter (which he produced) to the Burgesses of South Lynn, and cognisance had heretofore been allowed in this Court.—*Thorpe*.

No. 7.

pas partie, il ne poait pas aver reestente. Et fist² A.D. 1343. sa suggestion outre qe les deners sount leves, et pria *Scire facias* dacompter.—STON. Vous dites qil ad leve l'argent³; nous sumes acerte⁴ par recorde qil nad pas tenu par taunt de temps qil le pout aver leve, et sil eit amende la terre, et leve plus, quei est⁵ ceo a vous? Et si avera il unqore mises et custages.—*Lattourne*. Sire,⁶ toutes cestes choses vendrout⁷ par voie de respouns en l'acompte.⁸—HILL. Vous parlez en veyn, &c.

(7.)⁹ § Acompte vers resceivour¹⁰ en Lenne¹¹ et Southlenne.¹² Le Baillif de Southlenne, par¹³ *Rokel*, pria la conissaunce, par taunt qe le pleintif fut Burgeis,¹⁴ et par chartre le Roi quel il moustra, fut graunte as Burgeis de Southlenne¹⁵ conissaunce de contractes, &c., et autrefoith ceinz allowe.—*Thorpe*.

¹ The marginal note is, except the word *Nota*, from 25,184 alone.

² 25,184, suit.

³ L., qe les deners sount leves, instead of qil ad leve l'argent.

⁴ L., ap'ris; Harl., ascerte.

⁵ est is omitted from L.

⁶ 25,184, and C., fait; the word is omitted from L.

⁷ L., vendra.

⁸ 25,184, la Court.

⁹ From L., Harl., 25,184, and C. The record of this case is probably that which appears on the *Placita de Banco*, Trin. 17 Edw. III. R^o 283. An action of Account was brought by John de Wesenham, merchant, John atte Fen, merchant, and Thomas atte Gannoke, clerk, against Robert de Hakebethe, one of the collectors of the King's wools in the County of Norfolk. The declaration was that while he was their receiver he

received "de denariis ipsorum Johannis, Johannis, et Thomæ, per manus cujusdam Willelmi Braunche, apud Suthlenne septem marcas, et etiam per idem tempus per scriptum suum recepisset per manus prædictorum Johannis, Johannis, et Thomæ apud Lenne Episcopi ducentas quaterviginti et sex decim libras et viginti et duos denarios, ad mercandizandum, et proficuum ipsorum Johannis, Johannis, et Thomæ inde faciendum."

¹⁰ L., resceyvours.

¹¹ Harl., Lewe.

¹² Harl., South Lew. In L. the words diverse lieuz are substituted for Lenne et Southlenne.

¹³ The words Le baillif de Southlenne par are omitted from L.

¹⁴ L., Burgeis de Southlime.

¹⁵ 25,184, and C., Southlime.

No. 8.

A.D. 1343. He cannot have the cognisance, because the receipt of the money is supposed to have been in divers places, some of which are without their liberty.—HILLARY. Then you ought to have divers writs, and abate this one, as has been seen in respect of land demanded by a writ within a liberty and without.—Thorpe. A writ of Account is good in respect of receipts had in all the Counties of England, and we cannot know that he has a liberty.—HILLARY. In that way you will be able to oust every one from the advantage of his liberty, which is not reasonable.—Thorpe. If the defendant be foreign to the liberty, the person having the liberty could not do right to the parties; wherefore the plaintiff shall elect his mode of suing.—HILLARY. We will consider.—Afterwards the defendant answered over.

Continuation of an action of Deceit, against one who sued a *Præcipe in Capite*, on behalf of the lord, in which he recovered damages, and the other was taken.

(8.) § In Easter Term last, as 'appears above,¹ it was found on a writ of Deceit, which a woman brought in accordance with her case, that a *Præcipe in Capite* was sued for the purpose of depriving the woman of her court. And the Inquest assessed the damages, in case the lady lost her court or seignory, at 200 marks, and, if not, at 100 marks.—Thorpe. It is certain that if my tenant perform or pay services to any person other than myself, although he charges

¹ Easter 17 Edw. III., No. 36.

No. 8.

La conissaunce ne put il aver, qar la resceite² est A.D. 1343. suppose en divers lieux, dount ascuns sount hors de leur fraunchise.—HILL. Donques duissez vous aver divers brefs, et abatre cesti, come homme ad vewe de terre demande par un bref deinz fraunchise et dehors.—Thorpe. Un bref Dacompt³ est bon de⁴ resceites faites⁵ en touz les Countes Dengleterre, et nous ne poms pas savoir qil ad fraunchise.—HILL. Issint purrez⁶ ouster chescun homme de fraunchise, qe nest pas resoun.—Thorpe. Si le⁷ defendant soit forein, il ne⁸ put faire dreit as parties; par quei le pleintif eslirra sa suyte.—HILL. Nous aviseroms.—Puis le defendant respondi outre.⁹

(8.)¹⁰ § *Termino Paschæ ultimo, ut patet supra*,¹¹ *Residuum de*¹² fut trove qe *Præcipe in Capite* fut suy pur tollir¹³ une femme sa court en bref de Desceite qe la femme porta solonc le cas. Et lenqueste en cas qe la Dame perdist sa court ou¹⁴ seignourie assisterent les damages a ce marcs, et si noun a ce marcs.—Thorpe. Il est certain qe si mon¹⁵ tenaunt face ou paie¹⁶ services a autre qe moy, coment qil se charge

¹ The marginal note is, except the word *Acompte*, from 25,184 alone. In L. there is no marginal note at all.

² 25,184, *rente*.

³ *Dacompt* is from L. alone.

⁴ All the MSS. except L., de counter de.

⁵ *faites* is omitted from L.

⁶ L., *poiez*.

⁷ C., *lour*.

⁸ *ne* is from L. alone.

⁹ The last sentence is omitted from L. Nothing appears on the roll as to the claim of cognisance of pleas. As to the seven marks the defendant pleaded the general issue "Not Receiver," upon which issue was joined. Then follow the

words "Et quoad residuum—" [Fitz., and here the entry on the roll ends abruptly. 38.]

¹⁰ From L., Harl., 25,184, and C.

¹¹ The words *Residuum de* are from L. alone.

¹² The words of the marginal note after *Desceite* are from 25,184 alone.

¹³ All the MSS. *supra, folio eodem*, but the report of Easter term is on a previous folio in L., Harl., and 25,184.

¹⁴ Harl., *tollir*.

¹⁵ L., *et*.

¹⁶ 25,184, *le*. In C., the words *seisi* noun are substituted for *qe si mon*.

¹⁷ The words *ou paie* are omitted from L.

No. 9.

A.D. 1348. himself to another, I am in no way damaged, but when he charges himself to the King I am out of possession, inasmuch as, if a wardship should befall, the King would have it until it was sued out of his hand.—STONORE. We do not see that; and suppose it were so, you would now have the 200 marks as one who had lost seignory, and to-morrow you would have the seignory back again by Petition.—HILLARY. It seems to us that you have not lost seignory, wherefore the Court adjudges that you do recover the 100 marks, and that the others be taken for the deceit.

Audita Querela on statute merchant, in which by precept from the Chancery an order was given to have the plaintiffs, who were imprisoned, before the Justices, and to cause the others to come.

(9.) § William de Thornewton and John his son sued an *Audita Querela*, in time of vacation, against certain executors and others, upon a statute merchant. And by the writ which was sent out of the Chancery the Sheriff was commanded to have here the bodies of William and John, who were imprisoned, and to cause the others to come, &c., but William did not come.—John came, and said, by *Moubray*, that there was a condition in the indenture, as to a release which William de Thornewton was to have made to B., and he alleged that this condition was not fulfilled. And (said *Moubray*) we tell you that William was always ready to perform it, to wit, to execute the release, and still is ready, if he were at large, &c.; judgment.—*Richemunde*. You see plainly how the release which William was to execute is quite at his own will, either to execute or to leave alone, and in that

No. 9.

vers autre, jeo ne sui de rien endamage, mes quant **A.D. 1343.**
 il se charge vers le Roi jeo su hors de possession,
 en taunt qe, si garde escheisit,¹ le Roi lavereit
 tange ceo fut suy hors de sa meyn.—**STON.** Ceo
 ne veioms pas; et mettetz² qil fut issi, voudrez³
 ore aver les cc marcs come cely qe eussez⁴ perdu
 seignurie, et demeyn⁵ laverez⁶ arrere par Peticion.
 —**HILL.** Il nous semble qe vous navez pas perdu
 seignurie, par quei agarde la COURT qe vous re-
 coverez les⁷ c marcs, et les autres pris pur la *Judicium.*⁸
 desceite.

(9.)⁹ § William de Thornetone et Johan soun fitz *Audita*
 suerent un *Querela*, en temps de vacacion, *Querela*
 vers certains executours et autres, hors dun estatut *sur statut*
 marchaunt.¹¹ Et par le bref qe maunde fut hors *mar-*
 de la Chauncellerie comaunde fut a Vicounte daver *chaunt,*
 le corps icy de William et Johan, qe furent en- *ou par*
 prisone,¹² et de faire venir les autres, &c., mes *precepte*
 William ne vint pas.—Johan vint, et dit, par *de Chaun-*
 qil y ad une condicion en lendenture dun relees qe *cellerie*
 William de T. duist aver fait a B.,¹⁴ quele condicion *fut*
 il alleggea qe nest pas tenuz. Et nous vous dioms *comande*
 qe William fut tout temps prest daver tenuz, saver *daver les*
 daver¹⁵ fait le relees, et unqore est, sil fut a large, *plaintifs,*
 prest, &c.; jugement.—*Richem.*¹⁶ Vous veiez bien *qe feurent*
 coment le relees quel William ferreit¹⁷ est tout a *enpris-*
 sa volunte demene, de faire ou de¹⁸ lesser, en quel *ones,*
devant les
Justices,
et de faire
venir les
*altres.*¹⁰

¹ L., acheit; Harl., escheisist.² L., mettoms.³ 25,184, vendrez.⁴ Harl., eust.⁵ L., de meen.⁶ Harl., lavereit.⁷ les is omitted from L. and Harl.⁸ *Judicium* is from 25,184 alone.⁹ From L., Harl., 25,184, and C.¹⁰ The marginal note after theword *Querela* is from 25,184 alone.¹¹ C., marchaund.¹² L., en presence.¹³ L., Mounbray; C., Mombray.¹⁴ 25,184, G.¹⁵ The words tenuz, saver daver are from L. alone.¹⁶ L., Thorpe.¹⁷ Harl., fist.¹⁸ de is from L. alone.

No. 10.

A.D. 1341. case, if he had executed it, and had tendered it, and still did tender it, it might throw the default upon us, but otherwise not.—HILLARY to *Moubray*. If you wished to have such a plea, why should you not have had the release ready?—But afterwards *Moubray* said that William had executed a release which he had ready against his adversary; besides, the day is not yet passed before which he is bound to make the release.—And afterwards the writ abated for variance between the *Audita Querela* and the indenture, in a surname, to wit, Cattone instead of Gattone; and execution was awarded to the plaintiffs in the statute merchant.—But HILLARY told them that execution will not be awarded before the will has been produced by the executors, &c.

Continuation of the *Quare impedit* for the King. Baldwin Fryville. The beginning is above in Easter Term.¹

(10.) § *Moubray*. We tell you that the agreement and the composition were that, on the next voidance after the composition, the presentation should belong to our ancestor, whose heir we are, who was the eldest; ready, &c.—STONORE. How can you say that, since it is contrary to common right that you should have two presentations together, unless you show it by specialty?—*Seton*. The King's declaration proves

¹ See above, Easter Term, No. 31, where the record is cited.

No. 10.

cas sil eust¹ fait, et lust tendu,² et uncore tendist, A.D. 1843
il purreit getter³ la defaut sour nous, mes autre-
ment nient.—HILL. a *Moubray*.⁴ Si vous voudrez
aver tiel plee, par quei⁵ ne ussez vous ew le relees
prest?—Mes puis *Moubray*⁴ dit⁶ qe William ad fait
un relees quel il ad prest devers luy; ovesqe ceo,
le jour nest pas uncore passe avaunt quel il⁷ est
tenuz de faire le⁸ relees.⁹—Et puis le bref abatist
par variaunce entre le *Audita Querela* et lendenture,
en un sournoun, saver Cattone pur Gatone,¹⁰ et
execucion agarde a les pleintifs en lestatut.—Mes
HILL. les¹¹ dit qe execucion ne serra¹² pas agarde
avant qe testament soit moustre par les executours,
&c.

(10.)¹³ § *Moubray*. Nous vous dioms qe lacorde¹⁵ *Residuum*
et¹⁶ la¹⁷ composicion¹⁸ fut¹⁹ qe al proschein void-
aunce apres lacorde²⁰ qe le presentement serreit²¹ a
nostre auncestre, qi heir nous sumes, qe fut eignesse; *Quare*
prest, &c.—[STON. Coment poiez vous dire cella, *impedit*
del houre qe cest countre²² comune dreit qe vous *pur le*
averez ij presentements ensemble, si vous nel *Roi.*
moustrez par²³ especialte?] *Baldewyn*
—*Setone*.²⁵ La mous- *Freville.*
Princi-
pium
supra,
Termino
Pasche.¹⁴

¹ All the MSS., except C., fut.

² Harl., tendi.

³ Harl., and C., gettre.

⁴ L., *Mounbray*.

⁵ The words par quei are omitted from C.

⁶ dit is omitted from Harl.

⁷ Harl., qil, instead of quel il.

⁸ le is omitted from 25,184.

⁹ relees is from L. alone.

¹⁰ So in L. The MSS. all give these names somewhat differently.

¹¹ les is omitted from L.

¹² 25,184, serreit.

¹³ From L., Harl., 22,552 (where the continuation is placed in Easter Term) 25,184, and C.

¹⁴ The marginal note as far as

the word Roi is from L., and 25,184, the rest from 25,124 alone. In Harl., the note is *Residuum* Baudewyn.

¹⁵ Harl., and 25,184, le recorde.

¹⁶ et and the six preceding words are omitted from L.

¹⁷ L., Par; 25,184, sa.

¹⁸ Harl., comune purpos.

¹⁹ L., fut ordeyne.

²⁰ C., la recorde.

²¹ L., and C., serra.

²² countre is omitted from 25,184.

²³ 25,184, pas; the word is omitted from Harl.

²⁴ The words between brackets are omitted from L.

²⁵ L., *Stouff*.

No. 10.

A.D. 1348. that the agreement is such; besides, the first presentation of Thomas de Blaston cannot be said to be by virtue of a turn by common right, nor by composition, on the matter which we allege.—*Thorpe*. You shall not be admitted to the averment, for the composition and the agreement, such as we allege them to be, were, by the manner of the plea, previously held to be not denied, and you abode judgment, inasmuch as by the presentation made by your ancestor, after the allotment of the advowson made in Chancery to the purparty of Ralph le Botiler's ancestor, the heir in whose right the King claims this presentation was put out of possession, and consequently the King also, because you were sole patron, and as appears by the roll—you abode judgment absolutely whether the King shall have an action by a possessory writ, and upon that we were adjourned until now, &c., and there is nothing more on the roll.—*Seton*. It is always for the King to maintain his declaration, and that we have destroyed, because the presentation, which our ancestor, who was the eldest, had last, was not, in this case, either by common right or by composition—not by common right, because of common right, after the allotment made to Ralph le Botiler, she who was eldest was as much a stranger, and out of right and of possession, as the greatest stranger in the world until the allotment was defeated by suit in Chancery, such as is given in

No. 10.

traunce le Roi prove qe lacorde¹ est tiel; ovesqe^{A.D. 1313.} ceo, le primer presentement de Thomas de Blastone ne poet estre dit par force de tourn par comune dreit, ne par composicion, sur la matere qe nous alleggeoms.—*Thorpe*.² Al averement ne serrez resceu, qar la composicion et³ lacorde,⁴ tiel⁵ come nous alleggeoms, fut⁶ par le manere del plee avaunt ces hures tenu a nient dedit, et demurastes⁷ en jugement, desicome par le presentement vostre auncestre, apres lalotement⁸ de lavoescoun fait en Chauncellerie en⁹ la purpartie launcestre¹⁰ Rauf Boteller, leir en qi dreit le Roi cleyme ceo presentement fut mys hors de possession, et *per consequens* le Roi, pur ceo qe vous fuistes soul avowe, et, come piert par roulle, estes demure en jugement tout suys¹¹ si le Roi avera accion par bref de possession, et sur ceo sumes ajourne tange ore, &c., et plus nest pas en roulle.—*Setone*. Il est touz jours al Roy de maintenir sa moustraunce,¹² et ceo nous avoms destruit, qar le presentement qe¹³ nostre auncestre, qe fut eignesse, avoit derrein ne fut mye¹⁴ ycy¹⁵ ne par comune dreit ne par composicion—par¹⁶ comune dreit nient, qar de¹⁷ comune dreit apres lalotement fait a Rauf B., cele qe fut eignesse fut si estraunge, et hors de dreit et de possession, come le plus estraunge de mounde tange lalotement fut defait par suyte en Chauncellerie, come est done en le cas pur les

¹ Harl., and C., la recorde.

² The passage from est tiel to *Thorpe* is repeated in C.

³ The words la composicion et are from 22,552 alone.

⁴ 25,184, le recorde.

⁵ L., ne fut pas tiel.

⁶ L., vous alleggez qar, instead of nous alleggeoms, fut.

⁷ C., demoustrastes.

⁸ 25,184, le attournement.

⁹ L., a.

¹⁰ launcestre is omitted from 22,552.

¹¹ L., sus.

¹² L., demoustraunce.

¹³ qe is omitted from L. and 25,184.

¹⁴ mye is from L., and C. only.

¹⁵ ycy is from L. alone.

¹⁶ par is omitted from 25,184.

¹⁷ 25,184, par.

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A.D. 1343 such a case for the other parceners; and if a stranger had then presented when Fryville presented Thomas de Blaston, no one would have an action to deraign by writ of Right except the person to whom the advowson was assigned as purparty;—nor can the presentation be by virtue of a composition, for neither at the time of the presentation of Thomas de Blaston nor before he was admitted and installed was there any composition, but only after that time.—HILLARY. When partition is made in Chancery, and assignment of an advowson is made to one parcener, and the other parceners are possibly under age, and afterwards, at their full age, they have a dispute on the next avoidance, and make a composition, or without any dispute present in turn as though no partition had been made, do you think that the partition is not defeated? (as meaning to say that it is), because there is no necessity in that case to cause any reseizing into the King's hand. Therefore, when in your case the eldest had the first presentation after the death of the woman who was tenant in dower, even though there was such a purparty assigned in Chancery, still that presentation cannot be said to be by usurpation, but shall rather be adjudged to be by common right in commencing presentations by turn. And [whereas] you say that the person to whose purparty the advowson was allotted, because she was put out of possession by the presentation, would have a writ of Right, she would never have alone a writ of Right against her coparcener, in respect of the seisin and the presentation

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autres parceners; et si un¹ estraunge ust donques A.D. 1343. presente quant Fryville presenta Thomas de Blastone, nul avereit accion a derener par bref de Dreit forsque celui a qi lavoessoun fut assigne en purpartie; ne par composicion ne poet le presentement estre, qar al temps del presentement Thomas de Blastone ne devant qil fut resceu et installe ny avoit il pas composicion, mes² puis cel temps.—HILL.³ Quant purpartie est fait en Chauncellerie, et assignement est fait a un parcenere dune avoessoun, et les autres⁴ parceners⁵ par cas⁶ sount deinz age, et apres, al plein⁷ age, al proschein voidance, eles⁸ mettent debat, et fount composicion, ou sanz debat presentent par tourn auxi come nule purpartie ust este fait, quidez vous qe la purpartie nest pas defait? *quasi diceret sic*, qar ja ne bosoigne il en le cas de faire resseisir⁹ en la mayn le Roi. Donques, quant en vostre cas leignesse¹⁰ avoit le primer presentement apres la mort la femme tenaunte en dowere, tout y avoit il tiele purpartie assigne en Chauncellerie, unqore cel¹¹ presentement ne put¹² estre dit par¹³ purprise, mes serra plus toust ajuge¹⁴ par comune dreit en comenceaunt tourn. Et vous parlez qe¹⁵ cele en qi purpartie lavoessoun fut allote¹⁶ avereit,¹⁷ pur ceo qele fut mys par le presentement hors de possession, bref de Dreit, jammes navereit ele vers sa parcenere de la seisine et le¹⁸ presentement¹⁹

¹ un is from L. alone.² 22,552, ne.³ HILL. is omitted from L.⁴ autres is omitted from L.⁵ The report ends here in 22,552.⁶ The words par cas are omitted from L.⁷ L., a lour, instead of al plein.⁸ C., et les.⁹ L., and Harl., resseiser.¹⁰ L., laynesse; 25,184, and C., leignesse.¹¹ L., tiel.¹² L., purra.¹³ par is omitted from L., and 25,184.¹⁴ L., estre dit; the word is omitted from 25,184.¹⁵ 25,184, par.¹⁶ C., abote.¹⁷ C., avoit.¹⁸ le is from L. alone.¹⁹ C., apres, instead of et le presentement.

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A.D. 1343. of the ancestor, nor if a stranger usurped would she have any other suit except in common with her coparceners.—PARNING. You are speaking of two matters which are contrariant, and you are claiming by both, that is to say, you are claiming as sole patron by usurpation, and at the same time you are claiming the presentation by virtue of a composition, attributing to them both right and possession which can never be joined in one answer.—*Blaykeston*. We must have both, for, if we did not show that our presentation was other than by common right, they would now have the presentation by common law, because they would have the second turn, and for that reason we have alleged that we presented as sole patron, and not as parcener; and further, when the composition comes from them, we say that the composition gives us the presentation now.—PARNING. When you claim through a composition you claim as parcener; and where have you heard that a presentation by one parcener puts another out of possession?—*Seton*. At common law it did so and so the Statute¹ supposes. And we have shown that we are at common law inasmuch as by the assignment of a purparty the advowson was put out of the course of coparcenary.—PARNING. At common law an usurpation by one did not put another out of possession, and, when any one presents, who can understand that he presents

¹ 13 Edw. I. (Westm. 2), c. 5.

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launcestre soul bref de Dreit, ne, si estraunge ust A.D. 1343.
 purpris autre¹ suite forsque² en comune ove³ ses
 parceners.—PARN.⁴ Vous parles de deux choses qe
 sount contrariaunt,⁵ et clamez par lun⁶ et lautre, saver,
 come soul avowe par purprise, et, ovesqe ceo, vous
 clamez a⁷ ore⁸ le presentement par composicion,
 grauntaunt a eux dreit et possession qe se pount
 jammes joindre⁹ en un¹⁰ respons.—*Blaike*. Il nous
 covient aver lun et lautre, qar, si nous ne mous-
 trames¹¹ qe nostre presentement fut autre qe par
 comune dreit, ils averount de comune ley le pre-
 sentement a ore, pur ceo qils averount le seconde
 tourn, et pur ceo avoms allegge qe nous presentames
 come soul avowe, et noun pas come parcenere; et
 outre quant la composicion vient deux, nous dioms¹²
 qe la composicion nous¹³ doune le presentement a
 ore.—PARN.⁴ Quant vous clamez par composicion
 vous clamez come¹⁴ parcenere; et ou avez¹⁵ oy qe
 presentement dun parcenier mist autre hors de pos-
 session?—*Setone*.¹⁶ A la comune ley si¹⁷ fist,¹⁸ et
 ceo suppose lestatut. Et nous avoms moustre qe¹⁹
 nous sumes a la comune ley par taunt qe lavoiesoun
 par lassignement de purpartie fut mys hors de cours
 de parcenerie.—PARN.⁴ A la comune ley purprise
 dun ne mist²⁰ pas autre hors de possession, et, quant
 un homme presente,²¹ qi put entendre qil presente

¹ Harl., 25,184, and C., autri.

² Harl., et forsque.

³ C., od.

⁴ L., PARUENK.

⁵ All the MSS. but L., contrarie.

⁶ C., luy.

⁷ a is omitted from L.

⁸ The words a ore are omitted from Harl.

⁹ 25,184, yoindre.

¹⁰ un is omitted from L.

¹¹ L., moustroms.

¹² dioms is omitted from L.

¹³ C., ne nous.

¹⁴ 25,184, par.

¹⁵ L., unqes navez, instead of ou avez.

¹⁶ Harl., and 25,184, Ston.

¹⁷ L., and C., se.

¹⁸ Harl., siset, instead of si fist.

¹⁹ The words nous avoms moustre qe are omitted from L.

²⁰ L., mette.

²¹ presente is omitted from L.

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A.D. 1343. in any other way than in such way as he has title and colour to claim? for if I purchase an advowson, and present, I present by force of my purchase in my own right, and if, after my purchase, another usurps, and then afterwards I snatch a presentation, that will still be understood to be in my previous right. Since, then, you or your ancestor had a title and colour to present inasmuch as you were the eldest, who could understand that you presented in any other way, unless it were so shown? And common right purports that, even without any composition, the eldest shall present first, and the others afterwards, in turn, &c.—*Seton*. If the advowson was allotted to the youngest, as above, in Chancery, there is no doubt that, by force of that assignment, she will deraign the first presentation against the others by *Quare impedit*.—PARNING. What of that? But if she does not present, but the eldest does present, will not that be said to be a commencement of presentation by turns, as parcener? as meaning to say that it would. And in pleading your plea you have acknowledged that through the partition made in Chancery the right is in the heir in whose right the King takes this suit. But you say that he is out of possession, which can only be through the presentation made by your ancestor, which presentation you do not affirm to be by any other title than by usurpation. What reason should there be then, since the right is acknowledged to be in him who is in the King's wardship, why, on your acknowledgment, of which the King, and the Court for the King will take advantage, judgment should not be given for the King?

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par autre voie qe¹ par tiele voie come il ad title A.D. 1348. et² colour de clamer³? qar si jeo purchace avoesoun, et presente, jeo⁴ presente par force de mon⁵ purchace en mon dreit, et si, apres mon purchace,⁶ autre purprent, et puis apres jeo happe un presentement, unqore est ceo entendu en moun auncien dreit. Quant donques vous ou vostre auncestre aviez un title et² colour de presenter par taunt qe vous fuistes eignesse, qi put entendre qe vous presentastes par autre voie, si ceo ne fut moustre? Et comune dreit voet qe, tut saunz composicion, eignesse presentera primes, et puis *vicissim* les autres, &c.—*Setone*. Si lavoessoun fut allotte a la punesse, *ut supra*, en Chauncellerie, *non est dubium* qele ne desrenera, par force de cel assignement, le primer presentement vers les autres par *Quare impedit*.—*PARN*. De ceo quei? Mes si ele ne presente pas, mes leignesse presente, ne serra ceo dit comenceaunt tourn come parcenere? *quasi diceret sic*. Et en plee pledaunt⁷ vous avez conu qe par⁸ la purpartie fait en Chauncellerie le dreit est en leir en qi dreit le Roi prent ceste suyte. Mes vous dites qil est hors de possession, qe ne poet estre forsqe par presentement de vostre⁹ auncestre, quel presentement vous naffermes¹⁰ pas par autre title qe par¹¹ purprise. Quel resoun serreit il donques qe quant le dreit est conu¹² a celui qest en la garde le Roy pur quei¹³ de vostre conissaunce, de quei le Roi et Court pur le Roi prendra avauntage, najugera pur le Roi?

¹ Harl., com.² L., ou.³ 25,184, desclamer, instead of de clamer.⁴ C., ne.⁵ L., mesme le.⁶ The words et si apres, mon purchace are omitted from L.⁷ C., pendaunt.⁸ par is omitted from Harl.⁹ 25,184, nostre, instead of de vostre.¹⁰ L., naffermates.¹¹ par is omitted from L.¹² 25,184, tenu; C., cognu.¹³ L., qe, instead of pur quei.

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A.D. 1343. Besides, I never heard that composition or agreement in respect of an advowson was made between parceners or others who were strangers, where it was acknowledged that the advowson belonged to one of the parties alone; but where a dispute had arisen between parceners or others in respect of an advowson, where by common intendment it was not known to whom the right belonged, there one has heard that an agreement has been made; so that, when you allege a composition, or acknowledge it, you cannot say that the right belonged to one of the parceners alone. Besides, although the King speaks of an agreement or composition, there is not much stress to be laid on that, because he does not make his declaration upon any thing else than that which common law purports without any composition; therefore, since common law serves his purpose, how will you put him outside the common law without a specialty? And I am very much surprised that Court or party should have admitted you to speak of three matters so contrariant as those which you have taken in one answer.—*Derworthy*. It is certain that the first presentation could not be said to be in commencement of presentation by turn; but even though it was by usurpation (which we do not admit, because it was possibly in virtue of a grant from her ancestor which could not now be pleaded), still this tort was naturally purged afterwards by the

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Ovesqe ceo, jeo¹ nay pas oy qe composicion ou A.D. 1343. acorde se prist davoessoun entre parceners ou autres estraunges, ou ceo² fut conu qe lavoessoun fut soulement a un des parties³; mes sur debat mys⁴ entre parceners ou⁵ autres dune avoessoun, ou homme de comune entent⁶ ne savoit a qi le droit fut, la ad⁷ homme oy qe acorde se prist; issint⁸ qe, quant vous alleggez composicion, ou la conissez,⁹ vous ne poiez dire¹⁰ qe le droit fut a un des parceners¹¹ soulement. Ovesqe ceo, coment qe le Roi parle dacorde¹² ou composicion,¹³ ceo nest pas moult¹⁴ a charger, qar il ne fait pas sa moustraunce sur autre chose qe comune¹⁵ ley ne¹⁶ voet¹⁷ tout saunz composicion; donques, quant comune droit luy seert,¹⁸ coment le voillez vous saunz especialte mettre hors de comune ley¹⁹? Et si ay jeo graunt merveille qe Court ou partie vous resceustrent²⁰ de parler de iij²¹ choses si contrariauntes come vous avez pris en un²² respouns.—*Derworthi. Certum est* qe le primer presentement ne put estre dit en comenceant tourn; mes tout fut ceo par purprise, come nous ne conissons pas, qar par cas ceo fut par le²³ graunt soun auncestre qe ne put a ore estre plede, unqore cest tort²⁴ naturellement fut purge apres par la composicion;

¹ jeo is omitted from C.² ceo is omitted from L.³ Harl., parceners.⁴ C., mit.⁵ C., od.⁶ entent is omitted from L.⁷ L., 25,184, and C., lad, instead of la ad.⁸ L., et issynt.⁹ L., conissaunce.¹⁰ L., dedire.¹¹ 25,184, and C., parties.¹² L., qe lacorde, instead of coment qe le Roi parle dacorde.¹³ L. composicion se prist.¹⁴ moult is omitted from 25,184.¹⁵ C., come.¹⁶ ne is omitted from 25,184.¹⁷ L., voet; C., fust.¹⁸ L., sert; C., seit.¹⁹ After ley, the words ne voet saunz composicion, dount qaunt comune droit are inserted in C. They appear to be a mere repetition of words just above.²⁰ L., escotereit; C., resceiveroit.²¹ iij is omitted from L.²² un is omitted from Harl.²³ C., leir, instead of par le.²⁴ 25,184, cel court, instead of cest tort.

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A.D. 1343. composition; and by the agreement the advowson began to return into the course of coparcenary, though it was previously quite out of that course by reason of the partition, so that the presentation must be made in accordance with that agreement.—*Thorpe*. They cannot traverse the agreement such as we suppose it to be, because they are abiding judgment on another point, as above; nor has the King anything to do with any mention of a partition in proof of which nothing is shown, and which does not confirm any right in them; and the King's title is taken from the fact that it is the second voidance after the death of Simon de Wykeford, who was presented by the person having the estate of Mary who was tenant in dower, so that by common right, since it is acknowledged that this is the second voidance, the turn to present is acknowledged to be that of the second parcener in whose right the King claims, unless it were shown to be otherwise by specialty.—*Derworthy*. The composition in this case only puts it into the course of coparcenary. Join, then, your composition which you have alleged to this, without having regard to the first presentation, which could not be in place of a presentation by turn, for the reason above, and then it would naturally now be the first turn, which, according to their statement, should belong to us.—*Stonore*. You are aiding yourself by a presentation which you do not show to be anything else but an usurpation, so that you have had the profit, and you now admit that the right belongs to the parceners in common, and, if you attain your purpose, you will oust the heir who is in the King's wardship from his turn, and the third parcener also; and you allege only a

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et par lacorde¹ comencea lavoiesoun² de revener en A.D. 1348. cours de parcenerie, qe fut tout hors de cel³ cours adevant par la purpartie, issint qe solonc cel acorde covient qe le presentement soit fait.—*Thorpe*. Ils ne pount traverser lacorde tiel come nous supposoms, qar ils sount⁴ en jugement sur autre point, *ut supra*; ne a parler de la purpartie de⁵ quei rien nest moustre, et qe nafferme⁶ nul dreit en eux le Roi nad qe faire; et le tittle le Roi pris de ceo qe la seconde voidaunce apres le mort Simound Wykeford presente par celui qavoit lestat⁷ Marie⁸ qe fut tenaunte en dowere, issint qe par⁹ comune dreit,¹⁰ quant cest conu¹¹ qe cest la seconde voidaunce, le tourn de presenter est conu¹¹ al seconde parcener en qi dreit le Roi cleyme, si ceo ne fut moustre autre par especialte.—*Derworthi*. La composicion en ceo¹² cas soulement la mette en cours de¹³ parcenerie. Joines, donques, vostre composicion quele vous avez allegge a cele, saunz aver regard al primer presentement, qe ne put estre en lieu de tourn, *causa qua supra*, et donques serreit¹⁴ naturelement le primer tourn a ore, quel par lour dit apprendreit a nous.—*Ston*. Vous eidez par un¹⁵ presentement quel vous ne moustrez autre qe purprise, issint qe vous avez eu le¹⁶ profit, et vous conissez ore le dreit en comune a les parceners, et, si vous eiez vostre purpos, vous ousteres le heir qest en la garde le Roi de soun tourn, et le tierce parcener auxi; et vous¹⁷ nallegez forsque une

¹ 25,184, and C., le recorde.

² Harl., la composicion.

³ L., del, instead of de cel.

⁴ Harl., ount.

⁵ C., par.

⁶ L., and Harl., afferme.

⁷ L., le dreit.

⁸ MSS. of Y.B., Margerie.

⁹ par is from L. alone.

¹⁰ dreit is omitted from Harl.

¹¹ 25,184, tenu; C., cognu.

¹² ceo is omitted from L.

¹³ The words cours de are from L. alone.

¹⁴ L., serra.

¹⁵ un is omitted from L.

¹⁶ C., ele, instead of eu le.

¹⁷ vous is omitted from L.

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A.D. 1348. composition contrary to common right, and that should fall under the head of specialty, of which you show nothing, and therefore the Court adjudges that the King do have a writ to the Bishop, &c.—And note that in this plea PARNING said that one might have a *Scire facias* in respect of a presentation after a purparty had been assigned in Chancery.

An Essoin for one who prayed to be admitted was adjudged before he was admitted. (10 *bis*.)¹ § Gerard del Isle prayed to be admitted to defend his right by reason of the default of his tenant for term of life; and the prayer was counter-pleaded, and thereupon an inquest was joined, and is still pending, and now Gerard is essoined.—*Gaynesford*. He is not yet a party to the plea; and therefore an essoin does not lie, and how can the essoin be expressed?—*Herlastone*.² The Justices have ordered it to be adjudged and adjourned; and it is in a plea of land, and so it is adjourned over; and he has found surety for the issues.—And note that Gerard made an attorney by writ, but not by bill.—See the contrary above in the 13th year,³ and many times elsewhere, in relation to this essoin.—But, after any one has been admitted to the defence of his right, an essoin lies for him.—And afterwards the Court said that there had been error in relation to this essoin.

Quare (11.) § Michael de Ponynges, John de Segrave,⁴ and

¹ As to the number, see p. 501, note 3.

² Herlastone was the principal Clerk in the Common Bench, as appears by the rolls.

³ Y.B. Trin. 13 Edw. III. No. 25. (Rolls Edition p. 336.)

⁴ A previous writ abated by reason of the death of Segrave's wife, who was a party. See above Hil. Term. No. 37.

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composicion countre comune resoun, qe cherreit en **A.D. 1343.** especialte, de quei vous ne moustres rien, si agarde la COURT qe le Roi eit bref al Evesqe, &c.¹—*Et nota in isto placito* qe PARN. dit qe homme avereit *Scire facias* dun presentement apres purpartie assigne² en Chauncellerie.

(10 bis.)³ § Gerard del Isle⁵ pria, par default son ternaunt a terme de vie, destre resceu a defendre son dreit; et fut countreplede, sur quei un⁶ enquest est joint, et pent,⁷ et ore Gerard est essone.—*Gayn.* Il nest pas partie unqore au plee; par quei essone ne gist pas, et coment⁸ dirra lessone?—*Herlastone.*⁹ Les Justices lount comaunde destre ajuge et ajourne; et cest *de placito terre*, et issint est il ajourne outre; et il ad trove soerte¹⁰ des issues.—*Et nota* qe Gerard fist attourne par bref, *sed*¹¹ *non per billam.*—*Quere supra contrarium anno xij, et sapius alibi, de isto essonio.*—*Sed, postquam aliquis fuerit admissus ad defensionem juris sui, essonium jacet pro eo.*—*Et postea CURIA dicit quod erratum est de isto essonio.*

(11.)¹² § Michel Ponynges, Johan Segrave, et Quare

¹ For the terms of the judgment see p. 440, note.

² L., assignement, instead of purpartie assigne.

³ In the old editions both this and the next preceding case are numbered "10." In order to avoid an alteration of all the succeeding numbers in this Term, this case is numbered 10 bis, and the old numbering has been preserved for the reports which follow. Any old reference by number will, therefore, still hold good. The text of this case is from L., Harl., 25,184, and C.

⁴ The marginal note is from 25,184 alone. In L., and Harl., it is Prier destre resceu.

⁵ L., de Idle, instead of del Isle.

⁶ un is from L. alone

⁷ L., pendaunt.

⁸ L., coment qil.

⁹ 25,184, Blastone.

¹⁰ L., suerte; C., seurte.

¹¹ 25,184, et.

¹² From L., Harl., 25,184, and C., but corrected by the record *Placita de Banco*, Trin. 17 Edw. III. R^o 42, d. It there appears that the action was brought by Michael de Ponynges, John de Segrave of Folkestone, William Baud and Joan his wife, and John Giffard of Bures and Eleanor his wife, against the Abbot of St. Augustine, Canterbury, in respect of a presentation to the church of Tenterden

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A.D. 1843. their coparceners brought a *Quare impedit* against the
impedit Abbot of St. Augustine of Canterbury, and counted
 for par- how their common ancestor was seised of the manor
 ceners as of Folkestone, to which the advowson is appendant,
 in case of an and presented in the time of King Henry III. And
 advowson and they made the descent to certain parceners, who made
 being they made the descent to certain parceners, who made
 appendant partition of the manor. And the advowson remained
 to a partition of the manor. And the advowson remained
 manor, of afterwards in common. And then they made the de-
 which scent of the manor and of the advowson to themselves,
 manor they *et ea ratione pertinet ad ipsos presentare.*—*Pulteney.*
 they showed First they have made the advowson to be appendant.
 that partition
 was made
 and that
 the
 advowson
 remained
 in
 common.
 Exception
 was taken
 that the
 advowson
 became as
 in gross.
 This was
 not
 allowed.

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lour³ parceners⁴ porterent *Quare impedit* vers Labbe A.D. 1343.
de Seint Augustin⁵ de Caunterbirs, et counterent⁶ *impedit*
coment lour comune auncestre fut seisi del maner pur par-
de F.,⁷ a quei lavoessoun est appendaunt, et pre- ceners
senta en temps le Roi H. Et fist la descente a come
certains parceners, qe firent purpartie del maner. appendant
Et lavoessoun demura apres en comune. Et puis a un
firent la descente a eux del maner et del avoessoun, maner, de
et ea ratione pertinet ad ipsos presentare.⁸—Pult. moustre-
Primes ount ils fait lavoessoun estre appendaunt, et fut fait et
lavoessoun demura en comune.

¹ MS., devant.² The marginal note, except the words *Quare impedit*, is from 25,184 alone.³ L., cez.⁴ The words of lour parceners are omitted from 25,184.⁵ Harl., Austyn.⁶ Harl., and 25,184, counta.⁷ MSS. of Y.B., B.

⁸ The declaration was, according to the roll, "quod quidam Hamo de Crevequer et Matildis uxor ejus fuerunt seisi de manerio de Folkestone, cum pertinentiis, ad quod advocatio ecclesie predictae pertinet, ut de feodo et jure ipsius Matildis, qui ad eandem ecclesiam presentaverunt quendam Magistrum Petrum de Depeham, clericum suum, qui ad presentationem suam fuit admissus et institutus tempore Henrici Regis proavi domini Regis nunc, post cujus mortem predicta ecclesia modo vacat, &c. Et, post mortem predictorum Hamonis et Matildis, de eadem Matildi descendit predictum manerium quibusdam Agneti, Alianore, Isoldae, et Isabellae, ut filiabus et heredibus, &c., inter quas prae-

dictum manerium partitum fuit, et advocatio predicta remansit eis presentandi, in communi, challenge &c. Et de ipsa Isabella, quia obiit sine herede de se, descendit propars sua manerii, avocationis, &c., praefatis Agneti, Alianore, et Isoldae, ut sororibus et heredibus, &c. Et de praedicta Agnete descendit propars sua manerii et avocationis, &c., cuidam Johanni ut filio et heredi, &c. Et de ipso Johanne descendit propars illa cuidam Julianae ut filiae et heredi, &c., quae quidem Juliana nupsit se praefato Johanni de Segrave qui nunc queritur, simul, &c., et de qua idem Johannes de Segrave suscitavit prolem, &c. Et de praedicta Alianora descendit propars sua manerii et avocationis, &c., cuidam Bertramo ut filio et heredi, &c. Et de ipso Bertramo, quia obiit sine herede de se, descendit propars illa cuidam Johanne ut sorori et heredi, &c. Et de ipsa Johanna descendit propars illa praefatae Johanne nunc uxori Willelmi Baud, quae nunc queritur simul, &c., et cuidam

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A.D. 1343. and by the partition which was made of the manor, and by the statement that the advowson remained in common, they have shown that the advowson became an advowson in gross, and again they make their conclusion just as if they ought to present because it is appendant; judgment of the declaration.—*Derworthy*. That is nothing, because the advowson did remain appendant to the manor, notwithstanding the partition of the manor.—*PARNING*. Where have you heard that partition can be made of an advowson?—*Thorpe*. It can be by recovery, and by alienation, for if one parcener aliene her purparty of an advowson to a stranger, or if a stranger recover against her, in both cases they hold severally; and so it is in respect of a mill which cannot be severed.—*PARNING*. As to a mill, one can have recovery of a moiety by writ, but not of a moiety of an advowson; and therefore, though it may be that two may be tenants in common of an advowson, by several titles, one writ of Right lies in common.—*R. Thorpe*. If two parceners demand an advowson by writ of Right, and one be nonsuited, the other who prosecutes her suit will demand a moiety, and will recover, and she who has recovered cannot hold

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par la purpartie du maner fait, et qe lavoësoun A.D. 1343 demura en comune, ount ils moustre qe lavoësoun devint un gros, et fount la conclusion auxi come sils duissent presenter come appendaunte; jugement de la moustrance.—*Derworthi*. Ceo nest nient, qar lavoësoun demura appendaunt al maner [*non obstante* la purpartie du maner].¹—*PARN.*² Ou avez oy³ qe purpartie purra estre fait davoësoun?—*Thorpe*. Si poet par recoverir, et par alienacion, qar si une parcenere aliene sa purpartie dun avoësoun a un⁴ estraunge, ou si un⁴ estraunge recovere⁵ vers luy, en touz deux les cas il tenent⁶ severalment; et si est il dun molyn qe ne poet estre severe.—*PARN.*² De molyn poet homme aver recoverir de moite par bref, mes noun pas davoësoun; et pur ceo, tut soit il qe deux soient tenaunts en comune par several title, dun avoësoun, un bref de Dreit gist⁷ en comune.—*R.*⁸ *Thorpe*. Si deux parceners demandent par bref de Dreit une avoësoun, et lun soit nounsuy, lautre qe suyst demandera la moite, et recovera, et cele qad recoveri ne poet pas tener⁹

" Agneti, ut filiabus et heredibus,
 "&c. Et de ipsa Agnete descendit propars sua, &c., prædicto Michaeli, ut filio et heredi, qui nunc queritur simul
 "&c. Et de prædicta Isolda descendit propars sua cuidam Johanni de Lenham ut filio et heredi, &c. Et de ipso Johanne descendit propars illa cuidam Nicholao ut filio et heredi, &c. Et de ipso Nicholao descendit propars illa cuidam Johanni, ut filio et heredi &c. Et de ipso Johanne descendit propars illa præfatæ Alianoræ nunc uxori prædicti Johannis Gyffard, ut filiæ, et heredi, quæ nunc queritur simul &c. Et

" ea ratione ad ipsos Johannem de Segrave tenentem per legem Angliæ, &c., post mortem prædictæ Julianæ quondam uxoris suæ, Michaelis, Willelmi, Johannam, Johannem Gyffard, et Alianoram pertinet ad prædictam ecclesiam præsentare."

¹ The words between brackets are omitted from 25,184.

² L., *PABUENK.*

³ L., *oie.*

⁴ un is from L. alone.

⁵ 25,184, recoveri.

⁶ L., *teynt il*, instead of *il tenent*.

⁷ Harl., *git.*

⁸ R. is omitted from C.

⁹ C., *tenir*.

No. 11.

A.D 1848. for we understand that the advowson remains append-
ant.—*Thorpe*. That is sufficient for us.

No. 11.

entendoms qe lavoessoun demurt¹ appendaunt.—*Thorpe*. A.D. 1343.
Ceo nous suffit.²

¹ All the MSS. except L., soit.

² The Abbot's plea and subsequent entries on the roll are as follow:—"Et Abbas, . . . non cognoscendo prædictam avocationem fuisse pertinentem ad manerium de Folkestone prædictum, nec quod prædicti Michaelis, Johannes, Willelmus, Johanna, Johannes, et Alianora tenent manerium illud, nec quod prædicti Hamo et Matildis in jure ejusdem Matildis ad ecclesiam prædictam præsentarunt prædictum Petrum de Depham, dicit quod ecclesia illa plena est et consulta de ipso Abbate et Conventu suo Sancti Augustini Cantuariæ, et de avocatione sua propria, et fuit per dies et annos ante diem impetrationis brevis sui prædicti, &c., unde petit judicium de brevi, &c. Dicit tamen quod dominus Knoutus quondam Rex Angliæ per chartam suam dedit Sancto Augustino, per nomen Sancti Augustini Patroni sui, corpus Sanctæ Mildredæ gloriøsæ Virginis, et etiam avocationem ecclesiæ prædictæ et alia terras et tenementa, per nomen totius terræ suæ infra insulam de Taneto et extra, cum omnibus consuetudinibus ad suam ecclesiam pertinentibus, quæ est ecclesia prædicta, et hæc omnia ita libera et quieta reddidit Deo et Abbati Athelstano, prædecessori, &c., et fratribus loci prædicti, &c. Et profert hic chartam domini Regis nunc quæ exemplificationem prædictæ

"chartæ prædicti Knouti Regis
"testatur in hæc verba. Ego
"Cnud per Dei misericordiam
"Basilius [*sic*] Agelnedo Archie-
"piscopo et omnibus Episcopis,
"Abbatibus, Vicecomitibus, et
"omnibus fidelibus totius Angliæ
"salutem et amicitiam. Notum
"sit vobis omnibus me dedisse
"Sancto Augustino, Patrono meo,
"corpus Sanctæ Mildrythe gloriøsæ
"virginis cum tota terra sua
"infra insulam [*de*] Tanato et
"extra, cum omnibus consuetu-
"dinibus ad suam ecclesiam
"pertinentibus. Hæc omnia ita
"libera et quieta reddo Deo et
"Abbati Aelfstano et Fratribus
"loci sicut ego ea unquam melius
"habui, tam in terra quam in
"mari, et in litore, ut habeant
"et possideant in perpetuum. Et
"qui hanc donationem meam
"infringere vel irritam facere
"temptaverit a Deo omnipotenti
"et omni Sancta Ecclesia ex-
"communicatus sit. Amen. Et
"dicit quod virtute donationis
"prædictæ prædecessori ipsius
"Abbatis ante tempus memoriæ
"ad prædictam ecclesiam præsen-
"tarunt clericos suos cum illam
"vacare contingebat, &c. Dicit
"etiam quod quidam Rogerus
"quondam Abbas loci prædicti,
"prædecessor, &c., præsentavit
"ad eandem ecclesiam quendam
"Hugonem Norman clericum
"suum, qui ad præsentationem
"suam fuit admissus et institutus
"tempore pacis, tempore Regis
"Ricardi, et a tempore institu-
"tionis suæ prædictæ in eadem

No. 12.

A.D. 1343. (12.) ¹ § *Thorpe*. The King has taken his title on
Continua-
tion

¹ This is a continuation of the case, the King v. the Abbot of Robertsbridge, Mich. 16 Edw. III. No. 41 (Rolls Edition, p. 394, *et* *seq.*). The record is there cited, by which it is shown that judgment was, in the end, given for the Abbot, and why (p. 405, note 6).

No. 12.

(12.)¹ § *Thorpe*. Le Roi ad pris son title de ceo A.D. 1343.*Residuum*

"ecclesia moratus fuit persona
 "impersonata per totum tempus
 "prædicti Regis Ricardi, et Regis
 "Johannis, usque ad annum
 "Regis Henrici filii Regis Johannis
 "tricesimum quintum, quo tem-
 "pore prædicta ecclesia vacavit
 "per mortem prædicti Hugonis
 "Norman. Et dominus Innocen-
 "tius Quartus, adtunc Papa, ut
 "in jure ecclesiæ prædicti Abbatis,
 "providit ad eandem ecclesiam
 "quendam Henricum de Wyngham,
 "clericum suum, virtute ejus
 "provisionis ipse institutus fuit
 "in eadem, tempore pacis, tem-
 "pore ejusdem Regis Henrici, &c.
 "Et postmodum dominus Alex-
 "ander Papa Quartus, per
 "Bullam suam, quam hic profert
 "in Curia, &c., licentiam dedit
 "cuidam Rogero tunc Abbati
 "loci prædicti et ejusdem loci
 "Conventui quod ipsi ecclesiam
 "prædictam appropriare possent
 "in proprios usus possidendam
 "sibi et successoribus suis in
 "perpetuum, ita quod, cedente
 "vel decedente adtunc rectore
 "ecclesiæ prædictæ, vel ecclesia
 "illa quovis alio modo vacante,
 "libere possent, auctoritate sua
 "propria, possessionem ejusdem
 "ecclesiæ ingredi, et proventus
 "inde recipere in perpetuum,
 "quo tempore prædictus Henri-
 "cus de Wyngham fuit persona
 "ecclesiæ prædictæ. Et post-
 "modum prædictus Henricus de
 "Wyngham creatus fuit in Epis-
 "copum Londoniensem, qui, non
 "obstante creatione sua prædicta,
 "per Bullam adtunc domini
 "Papæ Innocentii, per concessi-
 "onem suam, habuit omnia
 "beneficia sua quæ prius obtinuit,

"per quinquennium post creati-
 "onem ejusdem Episcopi. Et
 "postea idem Henricus de
 "Wyngham Episcopus, intendens
 "concessionem dicti Papæ Alex-
 "andri infra terminum prædic-
 "torum quinque annorum, per
 "litteras suas missas Archiepis-
 "copo ejusdem loci Diocessano,
 "ad opus eorundem religiosorum
 "resignavit quicquid juris habuit
 "in ecclesia supradicta, &c. Et
 "profert hic litteram prædicti
 "Henrici Episcopi, &c., quæ
 "prædictam resignationem testatur
 "in forma prædicta, &c., virtute
 "cujus concessionis in proprios
 "usus, &c., per Bullam prædic-
 "tam, et etiam resignationis
 "prædictæ ipsi tenuerunt prædic-
 "tam ecclesiam de advocacione
 "sua propria ab anno Domini
 "Millesimo Ducentesimo quinq-
 "agesimo nonodecimo [*sic*], &c.
 "Et Michael de Ponynges et
 "alii dicunt quod prædicta
 "ecclesia de Tenterdene vacat
 "et vacans fuit ante diem impe-
 "trationis brevis sui, scilicet
 "quartodecimo die Februarii anno
 "regni domini Regis nunc decimo
 "septimo. Et hoc paratus est
 "verificare ubi et quando," &c.
 "Et quia hujusmodi causæ
 "cognitio ad forum spectat
 "ecclesiasticum, mandatum est
 "Archiepiscopo Cantuariensi quod,
 "convocatis coram eo in hac
 "parte convocandis, rei veritatem
 "super hoc diligenter inquirat,
 "et quid inde inquisierit constare
 "faciat hic a die Sancti Michaelis
 "in xv dies per litteras suas paten-
 "tes, &c. Idem dies datus est par-
 "tibus prædictis hic," &c.

¹ From L., Harl., 25,184, and C.

No. 12.

A.D. 1343. the ground that the advowson of the prebend of Sale-
of the hurst was purchased from William de Echyngham in
Quare mortmain, which William held over of the King, &c.,
impedit against the Abbot of Roberts-
the Abbot bridge, in which the
of Roberts- King took his title on
bridge, in the ground
which the that the
King took advowson
his title on of the
the ground prebend
that the was pur-
advowson chased in
of the mortmain
prebend without
was pur- his
chased in license,
mortmain and it was
without shown by
his the King's
license, charter
and it was that he
shown by had given
the King's license to
charter amortise
that he three
had given churches
license to which con-
amortise stitute the
three prebend;
churches and be-
which con- cause this
stitute the grant of
prebend; license
and be- does not
cause this expressly
grant of make
license mention
does not of the
expressly patronage
make of the
mention prebend,
of the the pre-
the pre- bend is
bend is in itself
in itself something
something different
different from that
from that to which
to which the license
the license extends.

the ground that the advowson of the prebend of Sale-
hurst was purchased from William de Echyngham in
mortmain, which William held over of the King, &c.,
and the first purchase, of which they speak as being with
the King's license, was only a purchase of three churches
which the King gave the Abbot license to amortise.
and as to that which they say afterwards touching
the proceedings taken upon the purchase of the pre-
bend, supposing that the King granted the Abbot
license to hold the said churches although they con-
stituted the prebend, and although the Abbots had a
place in the Chapter, and a stall in the choir, and
were admitted as canons, &c., by all this no license is
granted to purchase the patronage of the prebend,
which remained in the King, and of which he ought
not by law to be divested without express words, so
that this patronage still remains to him, and the
Abbot has no charter of pardon of trespass, and has
admitted the purchase; judgment.—*Pulteney*. You
suppose that we purchased the advowson of the pre-
bend, and in such a manner that since the King is
apprised of his right and of the damage to him, as is
recited in his charter, he granted to us to hold the
prebend to our own use; this was naturally an ex-
tinguishment of his right, and it would be impossible
that we and our successors should, by force of the
charter, be prebendary, and that the King should at
the same time have a patronage to present.—*Thorpe*.

No. 12.

ge lavoesoun de la provandre de Saleshurst fut A.D. 1843.
 purchace de W. de Echyngham² en mort meyn, *de Quare impedit,*
 quel W. tient outre du Roi, &c., et le primer pur- Pont
 chace dount ils parlent par conge le Roi ceo ne R[obert],
 fut forsque de trois eglises qe le Roi luy dona conge ou le Roi
 damortir, et apres quant³ al enpeschement⁴ del prist title
 purchace del provandre [qe le Roi luy duist aver qe lavoe-
 graunte conge de tenir les dites eglises, coment qeles soun de la
 firent la provandre],⁵ et qe les Abbes ussent lieu el provandre
 Chapitre,⁶ et stalle el⁷ quere,⁸ et fuissent resceu⁹ fut pur-
 en chanouns, &c., par tout ceo cy¹⁰ nest pas graunte chace en
 licence de purchacer lavowere¹¹ de la provandre, qe mort
 demura en le Roi, et quele ne luy deveireit pas meyne
 devestir par ley saunz¹² expresse parole, issint sanz son
 cele¹³ avowere¹¹ luy demoert unqore, ne chartre¹⁴ conge,
 de pardoun de trespas nad il pas, et le purchace et fut
 ad il conu; jugement.—*Pult.* Vous supposes qe nous par chartre
 purchaceames lavoesoun de la provandre, et issint le Roi qil
 qe quant le Roi est appris¹⁵ de soun dreit et de avoit done
 soun damage, come est reherce en sa chartre, nous¹⁶ conge
 graunta a tenir la provandre en propre oeps; ceo damortier
 fut naturelement un esteindre de soun dreit, et iij esglises
 serreit impossible qe nous par force de la chartre qe fount la
 fussoms provandrer, nous et nos successeurs, et qe provendre;
 le Roi ust un patronage de presenter.—*Thorpe.* et pur ceo
 qe cel
 grant ne
 fet pas
 mencion
 expresse-
 ment de
 lavoeire de
 la provan-
 dre qil est
 autre en
 lui mesme
 qe cel a
 quei le
 conge
 sestent.¹

¹ The marginal note subsequent to the word *impedit* is from 25,184 alone. In L., the note is *Residuum de Quare impedit* de Salishurst, and in Harl., *Residuum* Saleshurst.

² L., and C., Etynggham; Harl., Hethingham; 25,184, Ellynggham. The correct reading Echyngham is from the record.

³ quant is omitted from Harl.

⁴ L., peschement.

⁵ The words between brackets are omitted from L.

⁶ L., en Chapistre, instead of el Chapitre.

⁷ L., en.

⁸ 25,184, queor.

⁹ L., roule.

¹⁰ L., si.

¹¹ L., lavoesoun.

¹² L., si noun.

¹³ All the MSS. except L., par cele.

¹⁴ 25,184, charge.

¹⁵ L., apres, instead of est appris.

¹⁶ L., et.

No. 18.

A.D. 1343. It is certain that no advowson in England can be amortised, even though it be of my patronage, without the King's license; therefore, when he is himself patron two rights abide in him; and, though he may oust himself from one, the other remains with him; therefore, when he grants to an Abbot to hold a church *in proprios usus* for ever, if it be of his own patronage, and he do not grant the patronage, nothing is divested out of his person by that grant.—*Gaynesford*. He has by his charter first granted license to amortise the advowson of the three churches which constitute the prebend, as is supposed by the King's charter, so that the patronage of the prebend and of the churches is all one; and consequently, &c.—*Thorpe*. It cannot be that the two advowsons are all one, for when there was a Prebendary, and he held the churches *in proprios usus*, he held them of his own patronage, because no one can hold churches *in proprios usus* except of his own patronage, and therefore the patronage of the prebend still remained in another, that is to say in the person who presented to it.—And PARNING confirmed this.

Quid iuris clamat (13.) § *Quid iuris clamat* was sued against a lady, supposing that she held by lease from the conusor for term of her life.—*Rokele*. We tell you that she held in that manner on the day on which the note of the fine was levied, but now she is not tenant; and we tell you that the conusor was holden to us to warrant and

clamat against a tenant for term of life, who acknowledged the tenancy on the day on which the

No. 18.

Il est certain qe¹ nul avoesoun Dengleterre poet A.D. 1348.
estre amorti, tut soit ele de mavowere, saunz conge
le Roi; donques, quant il est mesme patroun deux
dreitz demorent² en luy; et, coment qil se ouste
de³ lun, lautre luy demoert; donques, quant il graunte
a un Abbe de tenir une eglise en propre oeps a
touz jours, si ele soit de savowere demene, et il ne
graunte pas lavowere, rien est devestu par cel
graunt hors de sa persone.⁴—*Gayn*. Il ad graunte
primes⁵ par sa chartre damortir⁶ lavoiesoun de les
iij eglises qe fount la provandre, come est suppose
par la chartre le Roi, issint qe lavowere⁷ de la
provandre et des eglises est tut un; et *per consequens*,
&c.—*Thorpe*. Il ne poet estre qe⁸ tut soit un les
deux avowesouns, qar⁹ quant Provandrer y avoit, et
tint les eglises en propre oeps, il les tint¹⁰ de
savowere demene, [qar nul poet tenir eglises en
propre oeps forsque de savowere demene],¹¹ et donques
unqore le¹² patronage de la provandre demura¹³ en
autre, saver en celui qe luy¹⁴ presenta. *Quod*
PARNING¹⁵ *affirmavit*.

(13.)¹⁶ § *Quid iuris clamat* fut suy vers une¹⁷ *Quid iuris*
dame, supposaut qe le tient du lees le conissour a *clamat*
terme de sa vie.—*Rokel*. Nous vous dioms qe le¹⁸ *vers*
tient jour de la note leve par la manere, mes ore *tenant a*
ele nest pas tenaunte; et vous dioms qe le conis- *terme de*
sour nous fut tenuz de garrantir et acquiter, et, si *vie, qe*
conust la
tenance
jour de la

¹ The words Il est certain qe are omitted from C.

² L., demorent.

³ All the MSS. except L., forsque de.

⁴ C., purpartie.

⁵ L., primys.

⁶ L., de morder.

⁷ L., lavowesoun.

⁸ L., qar.

⁹ qar is omitted from C.

¹⁰ L., and 25,184, forge, instead il les tint.

¹¹ The words between brackets are omitted from L. and 25,184.

¹² L., est le.

¹³ L., demore.

¹⁴ C., le.

¹⁵ L., PARNING.

¹⁶ From L., Harl., 25,184, and C.

¹⁷ L., J. de.

¹⁸ L., qil.

No. 14.

A.D. 1343. acquit, and, if you will acknowledge it, we are ready to attorn.—*Grene*. You see plainly how she shows nothing in support of that which she says as to warranty, &c. ; and if she has a specialty, the warranty, notwithstanding attornment, is saved to her, as much after as before, and she has acknowledged the tenancy ; wherefore, &c.—*Seton*. The person who demises tenements out of his own possession is bound to warrant them even without any specialty, and in that case he shall not be admitted to disclaim the reversion, in order to escape from warranty, without answering as to his lease, but a stranger who purchases can escape by disclaimer.—*SHARDELOWE*. You have the same advantage against the purchaser as you would have against the lessor, for if you have no specialty you will have no other claim against your lessor than that which you have against the purchaser, that is to say on the ground of the reversion ; but the lessor and every one else who has a reversion, when he is charged with warranty solely by reason of a reversion, can escape from it by disclaimer, except in case of dower.—And the Court agreed to this ; and therefore the Court asked whether she could say anything else.—And she, seeing the opinion of the Court, attorned, and prayed that her statement that she is not now tenant might be entered.

Audita Querela on statute merchant. The plaintiff recovered damages.

(14.) § The recognisor in a statute merchant was taken by virtue of a writ which issued upon the certificate, and he who was taken sued an *Audita Querela*

No. 14.

vous le³ voillez conustre, prest sumes dattourner.—A.D. 1343.
Grene. Vous veiez bien coment de ceo qele³ parle de garrantie, &c., ele moustre rien; et si ele eit especialte, *non obstante* lattournement, la garrantie est salve, si avant apres come devant, et la tenaunce ad ele conu⁴; par quei, &c.—*Setone.* Celuy qe lest hors de sa possession demene tut saunz especialte est⁵ tenuz a garrantir, et la ne serra il pas resceu a desclamer en la reversioun pour estourtre de garrantie, saunz respoudre a soun lees, mes estraunge purchaceour poet estourtre par desclamer.—SCHARD. Vous avez mesme lavauntage vers le purchaceour come vous aversez vers le lessour, [qar si vous neiez pas especialte vers vostre lessour, vous naverez autre lien qe vers cesty, cest a dire par voie de reversioun; mes le lessour]⁶ et chescun autre qad reversioun, quant il serra charge de garrauntie soulement par reversioun, par desclamer il poet estourtre,⁷ sil ne soit en cas de dowere.⁸—*Et ad hoc CURIA concordat*; par quei la COURT demanda si ele⁹ voleit dire autre chose.—*Et illa, videns opinionem CURIE*,¹⁰ *attornavit*, et pria qe soun dit fut entre qele³ nest pas ore tenant.

(14.)¹¹ § Le reconissour en¹² estatut marchaunt, par bref qe issit hors de la certificacion, fut pris, et celuy qe fut pris suyst un¹⁴ *Audita Querela* vers

¹ The marginal note subsequent to the word *clamat* is from 25,184 alone.

² le is omitted from L. and 25,184.

³ L., qil.

⁴ C., cognu.

⁵ All the MSS. except L., il est.

⁶ The words between brackets are omitted from L., and 25,184.

⁷ The words il poet estourtre are omitted from L.

⁸ In Harl., there are in the margin the words *Nota bene* ceo plee.

⁹ L., sil, instead of si ele.

¹⁰ CURIE is from L. alone.

¹¹ From L., Harl., 25,184, and C.

¹² The marginal note, except the words *Audita Querela*, is from 25,184 alone.

¹³ L., par.

¹⁴ un is from L. alone.

note, &c.,
mes ore
vient et
prest fut
dat-
tourner,
si gar-
rantie lui
fut conu.
Et tamen
attorna-
*vit.*¹
[Fitz.,
Quid juris
clamat,
26.]

Audita
Querela
sur estatut
mar-
chaunt.
Le plein-
tifrecovery
damages.¹²

No. 15.

A.D. 1343. against the recognissee to show cause why he sued contrary to his own release; and the recognissee appeared and denied the deed. And afterwards, at *Nisi prius* in the country, before SHARDELOWE, the recognissee, who had denied the deed, made default, wherefore the inquest was taken by his default, and it was found that it was his deed. And enquiry was made further as to damages, and SHARDELOWE, with the assent of the COURT, adjudged that the recognisor, who sued this writ of *Audita Querela*, should recover his damages, &c., to the amount of £20, and that the other, who denied his deed, should be taken.

Mesne, in which it was alleged, in abatement of the writ, that the plaintiff had only a term for life, and he was put to answer to this; and he maintained that he had a fee.

(15.) § A writ of Mesne was brought.—*Bret*. We tell you that the plaintiff has only a term for life in the manor whereof he supposes that he is our tenant, and this is a writ of Right; judgment whether the writ lies for him.—*Pulteney*. Say how, and by whose lease.—SHARDELOWE. Is that all you have to show in maintenance of your action? for, by common intentment, a tenant for term of life is tenant to his lessor, against whom this writ does not lie, but a writ of Covenant.—*Pulteney*. A tenant for term of life can be tenant to the chief lord, as, for instance, if the remainder be limited over in fee simple to another, or if the mesne purchase of one who is tenant in demesne for his life, he will still have such an action against his lord.—HILLARY. Then plead that; but when your count supposes you to be tenant in fee, and you have only a term for life, as he surmises against you, and you do not deny it, we understand that your writ is bad, unless you show some other matter; and suppose he were to say that he holds by

No. 15.

le reconisse pur quei il suyst¹ countre soun relees,² A.D. 1343. qe vint, et dedit le fait. Et puis al *Nisi prius* en pais, devant SCHARD., le reconisse,³ qavoit dedit le fait, fist default, par quei lenquest fut pris par sa default, et trove fut qe ceo fut soun fait. Et outre fut enquis des damages, et SCHARD., *ex assensu* CURIE, agarda qe le reconissour qe suyst ceo bref recovereit ses damages, &c., de⁴ xxli., et qe lautre *Judicium*.⁵ qe dedit son fait fust pris.

(15.) ⁶ § Bref de Meen fut porte.—*Bret*.⁸ Nous Meen, ou vous dioms qe le pleintif nad qa terme de vie en allegge fut, al le maner dount il suppose qil est nostre tenaunt, abat du et cest un bref de Dreit; jugement si pur luy le bref, qe le pleintif gise.—*Pult.* Dites coment et de qi lees.—nad qe SCHARD. Moustrez le vous en meyntenaunce de vostre terme de accion? qar, de comune entent, tenaunt a terme de vie est tenaunt a soun lessour, vers qi ceo bref il est mys de res- poundre; igist pas, mes bref de Covenant.—*Pult.* Tenaunt a et il terme de vie poet estre tenaunt a chief seignur, qil ad meyntynt come si le remeindre⁹ fut taille outre en¹⁰ fee simple fee.⁷ a autre, ou¹¹ si le meen¹² purchace du tenaunt en [Fitz., Meene, 33.] demene pur sa vie, unqore avera il tiel accion vers son seignur.—HILL. Pledez le donques; mes quant vostre counte vous¹³ suppose estre tenaunt de fee, et vous navez qe terme de vie, come il vous surmette, quele chose vous ne dedites pas, nous entendoms¹⁴ qe vostre bref soit¹⁵ malveis,¹⁶ si vous ne moustrez autre matere; et jeo pose qil deist¹⁷ qil tient

¹ L., ad suwy.² L., fait demene.³ 25,184, reconissour; C., recog- nisse.⁴ L., en.⁵ The marginal note is from 25,184 alone.⁶ From L., Harl., 25,184, and C.⁷ The marginal note, except the word Meen, is from 25,184 alone.⁸ L., *Bryt*.⁹ 25,184, remenant.¹⁰ Harl., and C., de.¹¹ L., et autrement, instead of a autre, ou.¹² L., seignour.¹³ 25,184, fut.¹⁴ 25,184, nentendoms.¹⁵ L., est.¹⁶ L., malveus.¹⁷ L. and Harl., dit; C., deit.

No. 16.

A.D. 1343. my lease, the reversion being regardant to me, that lease will not make an issue.—*Pulteney*. We tell you that he has a fee; ready, &c.—And the other side said the contrary.

(16.) § Dower was brought heretofore against Hugh de Elmsale, of Doncaster, and one E.,¹ and the writ heretofore was abated, inasmuch as H. and E. alleged that they held jointly with one M.,¹ and now the writ is brought anew against the aforesaid H. and E.¹ and M.,¹ who vouch to warrant.—*Richemunde*. You shall not be admitted to this voucher, because neither the vouchee nor his ancestors ever had anything since the seisin of our husband up to the day of the purchase of the first writ; ready, &c.—*Derworthy*. This averment is not given either by common law or by Statute; judgment, &c.—*Pulteney*. Then, do you refuse the averment?—*Blaykeston*. What do you say as to M.,¹ who was not a party to the first writ, why he should be ousted from the voucher?—*Pulteney*. The others cannot vouch without him, nor can he vouch without them, wherefore, if they be ousted, he is ousted; besides they were agreed among the parties to the first writ that M.¹ was tenant on the day of the purchase of the first writ, wherefore it is not right that by any subsequent conveyance he should put the demandant to delay.—*Stonore, ad idem*. When the non-naming of him abated the first writ, and this

Dower brought at first against two persons, who abated the writ on the ground of joint tenancy with a third, and now the three vouch, and the voucher is counter-pleaded by Statute² because the vouchee had nothing up to the time of the purchase of the first writ; and, notwithstanding that the third person was not a party to the first writ, it was accepted as a good counter-plea.

¹ For the real names see p. 521, note 1, and p. 523, note 17.

² 3 Edw. I. (Westm. 1) c. 40.

No. 16.

de moun lees, la reversioun a moy regardaunt, cel A.D. 1343.
lees ne fra pas issue.—*Pult.* Nous vous dioms qil
ad fee, prest, &c.—*Et alii e contra.*

(16.)¹ § Dowere autrefoith vers Hughe de Elmes-
hale, de Donecastre, et un E., quel bref autrefoith
fut abatu, par taunt qe H. et E. alleggerent qils
tiendrent² jointement ove⁴ un M., et freschement
ore le bref est porte vers les avanditz H. et E. et
M., qe vouchent a garrantir.—*Richem.* A ceo voucher
ne serrez resceu, qar le vouche ne ses auncestres
navoint rien puis la seisine nostre baroun tange
jour del primer bref purchace; prest, &c.—*Derworthis.*
Cest averement par comune ley ne par estatut nest
done; jugement, &c.⁵—*Pult.* Donques refusez lavere-
ment?—*Blayk.* Quei⁶ dites vous a M., qe ne fut
pas partie al primer bref, pur quei il serreit⁷ ouste
del voucher?—*Pult.* Les autres ne pount voucher
saunz luy, ne il ne pout voucher saunz eux, par
quei, sils soient oustes, il est ouste; ovesqe ceo
entre les parties al primer bref ils furent a un qe
M. al jour de cel primer⁸ bref purchace fut tenaunt,
pur quei par demise puis il nest pas resoun qil
mette⁹ le demandant a delaie.—*Ston., ad idem.*
Quant son nient nomer abatist le primer¹⁰ bref, et

Dowere
vers ij,
primes, qe
abatirent
le bref par
jointen-
ance ove
la terce, et
ore le [s]
ij vouch-
ent, et par
Statut est
contre-
plede qil
navoit
rien
tange le
primer
bref pur-
chace; et,
non
obstante qe
le terce ne
fut pas
partie, cest
accepte
pur bon
contre-
plee.²
[Fitz.,
Counterple
de
Voucher,
39; *Estop-*
pell, 218.]

¹ From L., Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Trin. 17 Edw. III., R^o 121. It there appears that the action was brought by Robert de Staynton and Joan his wife against Hugh de Elmsale, of Doncaster, and Alice his wife, and Thomas their son, in respect of a third part of one messuage in Doncaster, as Joan's dower of the endowment of John son of Edmund le Botiller, her former husband. The tenants

vouched Geoffrey Gotte, of Doncaster, chaplain.

² The marginal note, except the word Dowere, is from 25,184 alone.

³ L., tyndrout; Harl., tiendreint.

⁴ C., od.

⁵ The words jugement, &c., are from L. alone.

⁶ C., Qai.

⁷ L. and Harl., serra.

⁸ primer is omitted from C.

⁹ C., neit.

¹⁰ primer is omitted from L.

No. 16.

A.D. 1343. writ is newly framed against him and the other tenants, it is right that he should be brought into this writ to the demandant's advantage just as if he had been named in the first writ.—*Seton*. If a writ be abated after view on the ground of joint tenancy, it is certain that when the second writ is brought he who before had view will have view with the others; for the same reason he will have voucher. And suppose that M. had a fee and the others only a term for life, and on their default he were admitted to defend the whole, would he not have voucher, notwithstanding this counterplea? as meaning to say that he would. Therefore he will have it now, because the first writ, in which he was not named, will not operate to his damage.—*Pulteney*. He refuses the averment; judgment.—*Blaykeston*. In addition to that which we said before, we tell you that he whom we now vouch is the same person as he through whose feoffment we heretofore alleged the joint tenancy, which he could not then deny; wherefore he shall not now be admitted to traverse the seisin of the person whose seisin he then admitted.—*SHARDELOWE*. On the first writ the question by whose feoffment the joint tenancy came into existence was not to the purpose, but whether it was by his feoffment or that of another, the writ was bad; wherefore nothing was acknowledged by him except the joint tenancy, and therefore will you accept the averment? —*Blaykeston* maintained the seisin of the vouchee before the purchase of the first writ; ready, &c.—And the other side said the contrary.

No. 16.

ceo bref est conceu¹ freschement sur luy et les A.D. 1343.
 autres tenaunts, il est resoun qil soit mene² en
 ceo bref en avantage le demandant come sil ust
 este nome en le primer bref.—*Setone*. Si un bref
 apres vewe soit abatu par jointenaunce, *certum est*
 qen le seconde bref porte³ celui qe devant avoit⁴
 la vewe ove⁵ les autres averount la vewe; par
 mesme la resoun voucher. Et jeo pose qe M. avoit
 le fee, et les autres forsqe terme de vie, et par
 lour⁶ defaut il fut resceu a defendre lentier, navera
 il voucher, *non obstante* cel countreplee? *quasi diceret*
sic. *Ergo* a ore,⁷ qar ceo ne serra pas en damage
 de luy le primer bref ou il ne fut pas nome.—*Pult*.
 Il refuse laverement; jugement.—*Blayk*. Ovesqe ceo
 qe nous deimes⁸ devant, vous dioms qe celui qe
 nous vouchoms⁹ a ore est mesme la persone par
 qi¹⁰ feffement nous alleggeames autrefoith¹¹ la
 jointenaunce, quel il ne pout adonques dedire; par
 quei a traverser ore¹² la seisine de celui qi seisine
 adonques il conissast¹³ il ne serra resceu.—*SCHARD*.
 Ceo ne fut pas a purpos en le primer bref par qi
 feffement la jointenaunce fut, mes, fut ceo par soun
 feffement ou autre,¹⁴ le bref fut malveis¹⁵; par quei
 rien fut conu de luy forsqe la jointenaunce, et pur
 ceo voillez laverement?—*Blayk* meintient la seisine
 le vouche avant le primer¹⁶ bref purchace; prest,
 &c.—*El alii e contra*.¹⁷

¹ L., consen.² L., nome.³ porte is omitted from L.⁴ L., navoit.⁵ C., od.⁶ C., colour.⁷ The words *Ergo* a ore are omitted from L.⁸ L., deioms.⁹ L., vouchez, instead of nous vouchoms.¹⁰ C., quai.¹¹ autrefoith is omitted from L.¹² ore is omitted from L.¹³ L., and Harl., conissat.¹⁴ L., auncestre.¹⁵ L., malveus.¹⁶ primer is omitted from C.¹⁷ The entry on the roll following the voucher of Geoffrey Gotte is as follows:—“Et Robertus et Johanna
 “dicunt quod prædicti Hugo,
 “Alicia, et Thomas ad istud
 “vocare ad warrantizandum ad-

No. 17.

A.D. 1343. (17.) § The King brought a *Quare impedit* against the Archbishop of York, and the Chapter of the same place, on the ground that tortiously they hinder him from presenting, &c., by reason of the Archbishopric of York being lately vacant and in his hand, to the Deanery of York, and, therefore tortiously, &c., in that William de Melton, heretofore Archbishop, &c., was seised of the advowson of the Deanery as of fee, &c., which in his time became vacant, wherefore the Chapter of the same place, by license of the same Archbishop, elected one William la Zouche, who was admitted and installed by the said Archbishop, and afterwards, through the death of William de Melton, the Archbishopric came into the hand of the present King,

Quare impedit in respect of the Deanery of York, for the King, who took his title by reason of the Archbishopric of York being in his hand, &c., and he counted without mentioning any presentation or

No. 17.

(17.)¹ § Le Roi porta *Quare impedit* vers Levesqe² A.D. 1848. Deverwyke, et le Chapitre de³ mesme le lieu, qa *Quare impedit* tort luy destoubrent presenter, &c., al Deane Deverwyke, par cause del Ercevesqe⁴ nadgairs⁵ vacaunt et de la Dean de en sa mayn esteaunt, et pur ceo a tort,⁶ &c., qe pur le Roi, William de Meltone, jadis Ercevesqe, &c., fut seisi son title de lavoesoun del Deane come de fee, &c., qen soun par cause del Ercevesqe en temps de voida, par quei le Chapitre de mesme le esvesqe en lieu, par conge de mesme Lercevesqe, eslurent⁷ &c., et sa mayn, un William la Zouche,⁸ qe fut resceu, et installe⁹ &c., et conta del dit Ercevesqe, et apres, par¹⁰ la mort W. de sanz presentement Meltone, Lercevesqe devynt en la mayn le Roi ou

"mitti non debent quia dicunt quod
"ipsimet alias hic tuler-
"unt consimile breve de dote
"versus prædictos Hugonem et
"Aliciam de tertia parte mesuagii
"prædicti ita quod, con-
"tinuato inde processu inter
"partes prædictas, prædicti
"Hugo et Alicia venerunt in
"Curia hic, &c., et dixerunt quod
"ipsi tenuerunt mesuagium præ-
"dictum conjunctim cum præfato
"Thoma filio eorundem Hugonis
"et Aliciæ. Et prædicti Robertus
"et Johanna adtunc illud dedicere
"non potuerunt, per quod breve
"illud adtunc cassatum fuit. Et
"dicunt quod prædicti Robertus
"et Johanna tulerunt istud breve
"de Dote versus prædictos Hugo-
"nem, Aliciam, et Thomam, per
"dietas inde computatas, retorna-
"bile hic in crastino Sancti
"Johannis Baptistæ anno Regis
"nunc sextodecimo. Et dicunt
"quod prædictus Galfridus quem,
"&c., nec aliquis antecessorum
"suorum unquam aliquid habuer-
"unt in prædicto mesuagio, in
"dominico nec in servitio, post
"seisinam prædicti Johannis filii

"Edmundi le Botiller quondam
"viri, &c., de cujus seisina, &c.,
"usque ad diem impetrationis
"primi brevis ipsorum Roberti et
"Johannæ ita quod ipsos
"Hugonem, Aliciam, et Thomam,
"seu aliquos antecessorum suorum
"inde feoffasse potuerunt," &c.

Upon this issue was joined.
Nothing further appears, except
the award of the *l'enire*.

¹ From L., Harl., 25,184, and
C., but corrected by the record,
Placita de Banco, Trin. 17 Edw.
III. R^o 167. It there appears that
the action was brought by the King
against the Archbishop of York and
the Chapter of the Church of St.
Peter, York.

² So in all the MSS. of Y.B.

³ L., en.

⁴ L., Evesqe; Harl., Ercevesche.

⁵ L., neagers.

⁶ The words a tort are from L.
alone.

⁷ Harl., eslirrent.

⁸ L., and Harl., Souche.

⁹ C., estalle.

¹⁰ The word par is from L. and
Harl. only.

No. 17.

A.D. 1348. wherefore, by the King's license, the Chapter elected collation, the said William la Zouche as Archbishop, by and, this reason of whose creation as Archbishop, while the notwithstanding, temporalities were in the King's hand, the Deanery he re- became vacant, and so it belongs to the King to covered. present.—*Grene*. He has not counted that the person in whose right he claims presented; judgment whether to such a declaration he will be answered, because without presentation he does not show that the person in whose right he claims could be in possession.—*Thorpe*. That plea is to the action, because upon such a declaration I could not count of any presentation; consequently according to your intendment the King has no action.—*Grene*. Our exception is only to the declaration, for suppose that one who has no right, and who cannot count of any presentation, brings a *Quare impedit*, and counts without mentioning any presentation, I shall abate the declaration, and I shall not plead to his action before he has a declaration in due form. And you do not prove by count that the Archbishop was patron, but only Ordinary, and the King cannot claim anything else than that which the person himself would do, in whose right the King claims, and he would never have a count without mention of a presentation.—And afterwards it was entered in the roll, in order to strengthen the King's declaration, that the Chapter elected by license from the Archbishop, and

No. 17.

gore est, par quei,² par conge le Roi, le Chapitre A.D. 1343.
 eslurent³ le dit W. la Zouche⁴ en Ercevesqe,⁵ collacion,
 par qi creacion en Ercevesqe,⁶ esteauntz les tem- et non
 poraltes en la mayn le Roi, le Deane se voida, et obstante
 issint appent au Roi⁷ a presenter.—*Grene.* Il nad [Fitz.,
 pas counte qe celui en qi dreit il cleyme presenta⁸; *Quare* impedit,
 jugement si a tiele moustraunce voille estre respondu, 70.]
 qar saunz presentement il moustre pas qe celui en
 qi dreit il cleyme purreit estre possessione.—*Thorpe.*
 Cest al accion, qar sur tiel⁹ moustraunce jeo ne
 puisse counter de presentement; *per consequens* a
 vostre entent le Roi nad¹⁰ pas accion.—*Grene.* Nostre
 excepcion nest forsqe a la moustraunce, qar mettez
 qun homme qe nul dreit nad,¹¹ ne qe poet counter
 de nul presentement, porte *Quare impedit*, et counte
 saunz presentement, jeo¹² abatera la moustraunce,¹³
 et jeo¹³ ne pleray¹⁴ pas a saccion devant qil eit
 fourmel demoustraunce.¹⁵ Et vous ne provez pas par
 counte qe Lercevesqe fut patroun, mes¹⁶ soulement
 Ordiner,¹⁷ et le Roi ne poet autre chose clamer qil
 mesme freit¹⁸ en qi dreit il cleyme, le quel jammes
 navera counte saunz presentement.—Et puis en
 roulle fut entre, pur afforcer la moustraunce¹⁹ le
 Roi, qe le Chapitre eslust par conge Lercevesqe, et

¹ The marginal note, except the words *Quare impedit*, is from 25,184 alone. In Harl., the note is *Decanatus Eboraci. Quare impedit.*

² L., et, instead of gore est, par quei.

³ L., and Harl., eslirrent.

⁴ L., Harl., and 25,184, Souche.

⁵ L., Evesqe.

⁶ The words par qi creacion en Ercevesqe are omitted from L.

⁷ All the MSS. except L., a luy instead of au Roi.

⁸ For the words "*Grene.* Il nad pas counte qe celui en qi dreit il cleyme presenta" there are sub-

stituted in all the MSS. except L. the words "*Richem.* Le Roi nad counte de nul presentement."

⁹ C., cel.

¹⁰ L., navera.

¹¹ L., en ad.

¹² L., homme.

¹³ L., le counte. instead of la moustraunce.

¹⁴ Harl., pleda.

¹⁵ Harl., and C., moustraunce.

¹⁶ All the MSS. except L., forsqe.

¹⁷ Harl., Ordeigner.

¹⁸ L., ne put.

¹⁹ L., demoustraunce.

No. 17.

A.D. 1843. signified the election to the Archbishop, and that he established the person elected as Dean, and installed him.
—*Richemunde*. As to the Archbishop, he has nothing in the patronage, nor does he claim anything except as Ordinary, that is to say, examination, confirmation, &c.; judgment whether the writ lies against him.—

No. 17.

signifia¹ la eleccion al Ercevesqe, et il le stablist² A.D. 1348. en Dean et le³ installa.⁴—*Richem.* Quant al Ercevesqe, il nad rien en le patronage, ne rien ne cleyme mes come Ordiner,⁵ saver, examinacion, affirmacion, &c.; jugement si le bref vers luy ygise.⁶—

¹ L., signifia; Harl., singnifia.

² Harl., stablist.

³ le is omitted from L.

⁴ The words et le installa are omitted from Harl. The declaration, as entered on the roll, was "quod quidam Willelmus de Meltone quondam Archiepiscopus Eboracensis fuit seisitus de advocacione decanatus prædicti ut de feodo et jure Episcopatus sui prædicti, tempore pacis, tempore domini Regis nunc, cujus Willelmi Archiepiscopi tempore Capitulum Ecclesiæ Sancti Petri Eboraci, de licentia ejusdem Archiepiscopi, quendam Magistrum Willelmum la Zouche clericum in Decanum loci prædicti elegit, ac dictum Magistrum Willelmum la Zouche sic in decanum fuisse electum dicto Archiepiscopo significavit, qui quidem Archiepiscopus dictum Magistrum Willelmum in Decanum loci prædicti constituit, et eum in decanatu prædicto installavit, tempore pacis, tempore prædicti domini Regis nunc. Et postmodum Archiepiscopus prædictus per mortem dicti Willelmi de Meltone nuper Archiepiscopi Eboracensis in manum ipsius domini Regis nunc devenit, quo tempore dominus Magister Willelmus la Zouche electus fuit in Archiepiscopum Eboracensem, in quem creatus fuit, unde dictus decanatus vacavit, prædicto Archiepiscopo sic in manu domini Regis

"nunc existente, et ita ad dominum num Regem nunc pertinet ad dictum decanatum præsentare, prædicti Archiepiscopus et Capitulum ipsum injuste impediunt ad damnum domini Regis centum millium librarum. Et hoc paratus est verificare pro domino Rege."

⁵ Harl., Ordeigner.

⁶ According to the roll the plea on behalf of the Archbishop was "quod ipse est Ordinarius loci prædicti, et dicit quod Decanus ejusdem loci est electivus per Capitulum supradictum quando cunque contingat ipsum decanatum vacare, absque licentia Archiepiscopi et cujuscunque alterius. Et postquam aliquis electus fuerit in Decanum per Capitulum prædictum, ille sic electus per idem Capitulum Archiepiscopo qui pro tempore fuerit præsentabitur, et idem Archiepiscopus habebit examinationem, acceptionem, et confirmationem de eodem electo, ut Ordinarius, &c., post quas examinationem acceptionem, et confirmationem per prædictum Archiepiscopum ut Ordinarium sic factas dictum Capitulum ut de jure suo proprio præfatum sic electum installabit. Et sic dicit quod ipse nihil clamat, &c., nisi ut Ordinarius, &c. Et petit judicium si dominus Rex breve istud versus eum manu tenere velit," &c.

No. 17.

A.D. 1343. *Moubray*. As to the Chapter, they tell you that they ought to elect of themselves, without license from any one, one of the Chapter, and to signify their election to the Archbishop, to whom belong the examination, acceptance, and confirmation of the election, and, after the confirmation, the Chapter shall instal him. And we tell you that the Chapter, without license from the Archbishop, elected W. la Zouche, and afterwards presented him to the Archbishop William de Melton, as to Ordinary, who examined, accepted, and confirmed the election as above, and the Chapter, of themselves, installed him. And *Moubray* showed that other Deans had previously been installed in the same manner. And in time of vacancy of the Archbishopric the Chapter itself shall do all that belongs to it. And we do not understand that the King will be answered. And they said further that the Chapter, on the last vacancy, elected Master Thomas Sampson, and presented him to the present Archbishop, and because the Archbishop would not examine, accept, or confirm, we have our suit pending against him. —PARNING. The Archbishop of Canterbury would

No. 17.

Moubray. Quant al Chapitre, ils vous dient¹ qils A.D. 1343.
 doivent de eux mesmes eslire, saunz conge dascun,
 un² du Chapitre, et signifier al Ercevesqe lour
 eleccion, a qi appent le xamination, acceptacion, et
 confirmacion de la eleccion, et³ apres la confirma-
 cion le Chapitre le installera. Et vous dioms qe le
 Chapitre, saunz conge del Ercevesqe, eslust W.
 la Zouche,⁴ et puis al Ercevesqe W. de Meltone,
 come a Ordiner,⁵ le presenterent, le quel examina,
 accepta, et conferma la eleccion, *ut supra*, et le
 Chapitre deux mesmes le installa. Et moustra
 qautres Deans adevant furent par mesme la manere
 installes. Et en temps de vacacion le Chapitre
 mesme fra quanqe appent. Et nentendoms pas qe
 le Roi voille estre respondu. Et disoient outre
 coment le Chapitre, en la derreyne vacacion, eslurent
 Mestre Thomas Sampson, et le presenterent al
 Ercevesqe qore est, et pur ceo qil ne voleit examiner,
 accepter, ne affermer, nous avoms nostre suyte pen-
 daunt vers luy.⁶—PARN. Lercevesqe de Caunterbirs

¹ L., diount.² L., ou.³ L., qe confermera, instead of a qui
 appent le xamination, acceptacion,
 et confirmacion de la eleccion, et.⁴ L., Harl., and 25, 184, Souche.⁵ Harl., Ordeigner.⁶ According to the roll the plea
 on behalf of the Chapter was
 "quod decanatus prædictus est
 "quædam dignitas electiva, et
 "quod in qualibet vacatione
 "ejusdem decanatus, sede Archie-
 "piscopi plena, dictum Capitulum
 "unum de Canonicis ejusdem
 "Capituli in Decanum ecclesiæ
 "prædictæ, absque licentia Archie-
 "piscopi qui pro tempore fuerit,
 "seu cujuscunque alterius, eliget,
 "et dictum electum Archiepiscopo
 "qui pro tempore fuerit, ut

" prædictum est, ut loci Ordinario
 " præsentabit, et dictus Archiepis-
 " copus electionem prædictam exa-
 " minabit, et electum illum accepta-
 " bit, et confirmabit, et post dictam
 " confirmationem sic factam Capi-
 " tulo prædicto per prædictum
 " Archiepiscopum significatam dic-
 " tum Capitulum in jure ejus-
 " dem Capituli eum installabit.
 " Et si contigerit dictum decana-
 " tum vacare tempore vacationis
 " Archiepiscopatus prædicti, Capi-
 " tulum prædictum eliget in
 " forma qua superius dictum est,
 " et electum suum installabit ut
 " in jure ejusdem Capituli absque
 " aliqua præsentatione alicui inde
 " facienda, eo quod idem Capitu-
 " lum tempore vacationis est
 " Custos Spiritualitatis, &c. Et

No. 17.

A.D. 1343. not disclaim the patronage of the Priory of Canterbury for a thousand pounds (as meaning to say that the Archbishop of York ought not in this manner to have disclaimed the patronage).—And note that the Archbishop showed as part of his plea that the Chapter has such a right as it claimed.—*Thorpe*. As to the Archbishop, who has disclaimed the patronage, and pleaded the right of another, which does not lie in his mouth, we pray a writ to the Bishop. And as to the Chapter, you

No. 17.

ne voleit pas desclamer en le patronage de la Priorie A.D. 1343.
de Caunterbirs pur mille livres, *quasi diceret*
Lercevesqe Deverwyke ne dust pas issi¹ aver des-
cleyme en le patronage.—*Et nota* qe Lercevesqe
moustra² pur plee qe le Chapitre ad tiel dreit come
il clamerent.³—*Thorpe*. Quant al Ercevesqe, [qad
desclame en lavowere,⁴ et plede autri dreit, qe ne
gist pas en sa bouche, nous prioms bref al
Evesqe].⁵ Et quant al Chapitre, vous veiez bien

“quo ad hoc quod dominus
“Rex dicit dictum Capitulum
“elegisse in Decanum prædictum
“Magistrum Willelmum la Zouche
“ex licentia prædicti Willelmi de
“Meltone nuper Archiepiscopi loci
“prædicti, et ipsum sic electum
“dicto Archiepiscopo significasse,
“per quod idem Willelmus nuper
“Archiepiscopus prædictum Magis-
“trum Willelmum la Zouche in
“decanatu prædicto constituit et
“installavit, dicit quod idem
“Magister Willelmus sine licentia
“prædicti Willelmi nuper Archie-
“piscopi electus, et præfato nuper
“Archiepiscopo per prædictum
“Capitulum ut loci Ordinario
“præsentatus, et per eundem
“nuper Archiepiscopum examina-
“tus, acceptatus, et confirmatus,
“et, notificatione super præmissis
“dicto Capitulo per eundem nuper
“Archiepiscopum facta, dictus
“Magister Willelmus per dictum
“Capitulum ut in jure ejusdem
“Capituli, ut prædictum est,
“fuit installatus, et ante admis-
“sionem prædicti Magistri Wil-
“lelmi, ut prædictum est, Magister
“Robertus de Pykerynge et
“Magister Willelmus de Pykerynge,
“et omnes alii Decani ecclesiæ
“prædictæ a tempore cujus con-
“trarii memoria non existit ad-

“missi fuerunt in forma supra-
“dicta. Et dicit quod dictus
“decanatus per creationem præ-
“dicti Magistri Willelmi in Archie-
“piscopum Eboracensem vacavit,
“per quod idem Capitulum infra
“tres menses post prædictam
“creationem ei notificatam elegit
“in Decanum quendam Magistrum
“Thomam Sampson et ipsum
“præfato Willelmo nunc Archie-
“piscopo, ut loci Ordinario,
“præsentavit, qui quidem Archie-
“piscopus dictum electum exami-
“nare, acceptare, seu confirmare
“omnino recusavit, per quod
“prædictum Capitulum prosequitur
“jus suum versus prædictum
“Archiepiscopum in forma juris,
“unde petit judicium si dominus
“Rex in hoc casu ad hoc breve
“responderi velit,” &c.

¹ Harl., ici.

² L., prist.

³ L., and 25,184, moustrerent.

⁴ L., lavowesoun.

⁵ The words between brackets are omitted from C. According to the roll the replication to the plea on the Archbishop's behalf was “quod dictus decanatus sicut quævis dignitas seu portio cujuscunque ecclesiæ Cathedralis in regno Angliæ de fundatione progenitorum ipsius domini Regis quon-

No. 17.

A.D. 1348. see plainly how they claim the patronage of the Deanery, as above, and show nothing in proof, and by common right the patronage of the Deanery, even though by composition between them it may possibly be elective, remains with the Archbishop as much as in the case of prebends. And as to what they say about installation, that they will perform it, that can only be understood as officers of the Archbishop; wherefore we pray a writ to the Bishop. —*Pulteney*. Those who shall elect and present over are naturally patrons; and we have told you that we

No. 17.

coment ils cleymen¹ en lavowere² del Deane, *ut* A.D. 1343. *supra*, et de ceo ne moustrent rien, et³ de comune dreit lavowere⁴ del Deane, tut soit cele par composicion entre eux par cas electif, demoert al Ercevesqe si avant come des provandres. Et ceo qils parlent de installacion, qils ferrount, ceo ne poet estre entendu mes come ministres Lercevesqe; par quei nous prioms bref al Evesqe.⁵—*Pult.* Ces qe eslirrount et presenterount outre sount naturelement avowes; et nous avoms

"dam Regum Angliæ existit
"saltem cum dictus decanatus
"ex diversis possessionibus pro
"hospitalitatibus, eleemosynis, et
"cæteris operibus pietatis susten-
"tandis et faciendis a dictis
"progenitoribus domini Regis
"fertilis sic dotatus, et sic
"dominus Rex tam occasione
"dictæ foundationis quam ex jure
"suo regali dicti decanatus
"supremus patronus existit, et
"inde advocacionem, sicut cæte-
"rarum dignitatum seu portionum
"prædictarum habere dinoscitur,
"cujus ne dictæ hospitalitates,
"et eleemosynæ, ac divina ser-
"vitia, ob quæ invenienda dictus
"decanatus fundatus fuerat,
"aliqua^liter subtrahantur aut
"depereant interest providere.
"tam pro salvatione animarum
"progenitorum suorum quam pro
"conservatione jurium ecclesiæ
"Anglicanæ, quam conservare
"illam sacramenti sui vinculo
"astringitur. Et ex quo dictus
"Archiepiscopus cognovit dictum
"decanatum vacare tempore quo
"dictus Archiepiscopus in manu
"ipsius domini Regis fuit, et
"adhuc fore vacantem, et nihil
"in advocacionem dicti decanatus
"clamat, petit judicium si ipse
"actionem domini Regis seu jus

"suum in hac parte contradicere
"potest. Et petit breve Episcopo
"pro domino Rege," &c.

¹ C., cleimront.

² L., lavowesoun, instead of en lavowere.

³ et is omitted from L., and 25,184.

⁴ L., lavowesoun.

⁵ C., Ercevesqe. According to the roll the replication to the plea on behalf of the Chapter was "Quoad hoc quod dictum
"Capitulum allegat dictum de-
"canatum quandam dignitatem
"electivam existere, et Decanum
"qui pro tempore fuerit per idem
"Capitulum eligendum et in-
"stallandum et sic ipsi Capitulo
"electionem et installationem
"dicti Decani tantum asserendo
"se habere, dicit quod dominus
"Rex, ut supremus patronus
"dicti decanatus jure suo regio
"inde advocacionem habet, et ne
"divini cultus, ad quod [*sic*]
"dictus decanatus fundatus ex-
"titerat, subtrahantur seu pereant
"specialiter habeat providere, ut
"supradictum est, et pro hoc
"etiam quod dictus Archiepiscopus
"nihil se dicit habere in advoca-
"tione dicti decanatus, et sic
"juri suo inde renunciando, dicta
"advocatio ipsi domino Regi

No. 17.

A.D. 1343. always elected without license, and presented to the Archbishop, so that what he did was only as Ordinary; and we do not show, nor have we shown, how the matter commenced; wherefore we demand judgment. —PARNING. It does not follow, because they shall elect, and present over, that they are patrons: for every Convent which shall elect Abbot or Prior is not patron, but they have a patron paramount of their Abbey or Priory; and commonly where there are now secular canons, who have election, there were in former times monks, and, even though the habit be changed, all the rest, including the patronage, remains as before, and, if the Chapter should be patron of the Deanery, then, when there is a Dean, who is Head of the Chapter, he would be patron of his own Deanery, which cannot be: for they cannot demand, hold, or have anything, having regard to any person who is a stranger, except with the Dean, so that he

No. 17.

dit qe tout temps nous eslumes¹ saunz conge, et A.D. 1343.
 presentames al Ercevesqe, issint qe ceo qil fist ceo²
 fut forsqe come Ordiner³; et comment la chose
 comencea nous ne moustroms pas, navoms moustre⁴;
 par quei nous demandoms jugement.—PARN.⁵ Il
 nensuit⁶ pas, pur ceo qils eslirrount, et presenterount
 outre, qils sount patrouns: qar chescun Covent⁷ qe
 eslirra Abbe ou Priour nest pas patroun, mes ils
 ount un patroun⁸ paramount de lour Abbeye ou
 Priourie; et comunement ou seculers chanouns sount
 a ore, qe ount eleccion, en auncien temps furent
 moines, et, tout soit labit⁹ chaunge, le remenant et
 lavowere demurt come avant,¹⁰ et, si Chapitre serreit
 avowe del Deane, donqes, quant Dean y est, qest
 chief de Chapitre, il serreit¹¹ avowe de sa¹² Deane
 demene, qe ne poet estre: qar ils ne pount¹³ rien
 demander, tenir, ne aver, eiaunt regarde a estraunge
 persone, forsqe ove¹⁴ le¹⁵ Dean, issint qil covient

"tanquam supremo patrono im-
 mediate inheret. Et ex quo
 dominus Rex dictæ advocacionis
 jure suo regio sic comprobatur
 possessor, et idem Capitulum
 cognovit dictum decanatum
 tempore quo dictus Archiepisco-
 patus in manibus ipsius domini
 Regis extiterat vacasse, et adhuc
 vacare, nihil ipsi Capitulo com-
 petere nisi electionem et in-
 stallationem, quæ actioni domini
 Regis seu juribus suis in hac
 parte ob stare non debeant, eo
 quod dicti decanatus advocatio
 in dicto Capitulo per aliqua per
 ipsum Capitulum præallegata
 residere non potest, et ita ipsi
 domino Regi, ut possessori
 advocacionis dicti decanatus,
 pertineat præsentare, unde petit
 judicium pro domino Rege, et
 breve Episcopo," &c.

¹ L., eslisoms.

² ceo is omitted from C.

³ Harl., Ordeigner.

⁴ The words navoms moustre are from L. alone.

⁵ L., PARVENK.

⁶ L., suyst; C., ne fust.

⁷ L., Coynt; C., Covient.

⁸ The words mes ils ount un patroun are omitted from L.

⁹ L., labite; C., labbet.

¹⁰ avant is omitted from L.

¹¹ L., ils serrount, instead of il serreit.

¹² 25,184, la; the words de sa are omitted from L.

¹³ L., il ne put, instead of ils ne pount.

¹⁴ C., od.

¹⁵ L., al, instead of ove le.

No. 17.

A.D. 1343. must be named with the Chapter as tenant or demandant, though it is otherwise between themselves upon a certain composition that each shall be able to demand against the other; and, moreover, when this point was pleaded between the Dean and the Chapter of Lincoln it seemed extraordinary to the sages of the law, for they held it manifest error that the Chapter was admitted to plead against the Dean.—*R. Thorpe*. As to the Archbishop, his case is different from a common case of *Quare impedit* in respect of presentation to a church or prebend, in which there could be presentation, and in which he could be, according to common intendment, a disturber: for he has shown you that a presentation of this particular thing cannot be made; consequently the writ does not lie. And as to the Chapter, they show their right of election, in respect of which election, if they were disturbed, a *Quare impedit* would never lie, nor any other action in this Court; and if the King were to recover, he would oust them from this right for ever; wherefore their plea is that this writ does not lie.—*STONORE*. The King is Patron Paramount of the whole Bishopric, and, even though it be divided into several branches, such as Deaneries and other dignities, still, if the Archbishop be negligent, or will not provide, it belongs to the King to appoint a Guardian, &c.; and in former times the King gave the Bishoprics, and, although he has since given license to the Chapters to elect, the patronage still remains with him, and, when he is patron, and finds a vacancy, it belongs to him to present, and their right of election

No. 17.

estre nome ove¹ le Chapitre tenaunt et demandant, A.D. 1343. coment qe autrement est² entre eux sur certain composicion qe chescun purra demander vers autre; et unqore quant celcas fut plede entre le Dean et le Chapitre de Nichole sembloit merveille a les sages, qar ils le tyndrent errour apert qe le Chapitre fut resceu vers le Dean.—*R. Thorpe*. Quant al Ercevesqe, il est en autre cas qe comune cas de *Quare impedit* a presenter a eglise ou provandre, ou presentement purreit estre, et ou il purreit estre de comune entent destourbour: qar³ il vous ad moustre qe presentement de ceste chose ne poet estre fait; *per consequens* le bref ne gist pas. Et quant a Chapitre, il moustrent lour dreit de⁴ eleccion, de quel eleccion, sils fuissent destourbe,⁵ jammes ne girreit *Quare impedit*, ne autre accion - en ceste Court; et, si le Roi recoverast,⁶ il les oustereit de cel dreit a touz jours; par quei lour plee est qe cesty⁷ bref⁸ ne gist pas.—*Ston*.⁹ De tout¹⁰ Levesqe¹¹ le Roi est Soverein Patroun, et, tut soit ceo demembre en divers braunches, come Deans et autres dignites,¹² unqore, si Ercevesqe soit¹³ negligent, ou ne voille purvoer, a luy attient dordiner¹⁴ Gardein, &c.; et en auncien temps le Roi dona les Evesques,¹⁵ et, coment qe puis il dona conge a les Chapitres de eslire, unqore le patronage luy demurt, et, quant il est patroun, et trove la chose voide, a luy est il de presenter, et lour dreit de eleccion ne serra pas par taunt¹⁶

¹ C., od.² L., soit.³ qar is omitted from L.⁴ The words dreit de are omitted from L.⁵ L., il suffit destourbour, instead of sils fuissent destourbe.⁶ 25,184, coverast; C., recovereit.⁷ L., le; 25,184, lour.⁸ 25,184, dreit.⁹ L., *Stouff*.¹⁰ L., touz.¹¹ L., Evesques; Harl., Levesche.¹² 25,184, dignetees.¹³ L., Erchevesques soient, instead of Ercevesqe soit.¹⁴ Harl., dordeigner.¹⁵ C., Evesches.¹⁶ The words par taunt are from L. alone.

No. 18.

A.D. 1343. shall not be thereby lost, because he claims only by reason of the vacancy, saving the right of election;
 Judgment. and therefore the COURT adjudges that the King do have a writ to the Bishop.

Entry in
 the *post*
 against
 husband
 and wife.
 The wife
 was ad-
 mitted,
 and
 pleaded in
 abatement

(18.) § A wife was admitted [to defend] by reason of her husband's default, &c. And she demanded judgment of the writ, because, whereas the writ supposes that the husband and his wife have not entry but after the lease, &c., the husband found his wife seised, so that the entry of the wife alone should be supposed, and by this writ it is supposed that they entered in common, which is false.—*Pulteney*. She is

No. 18.

perdu, qar il cleyme forsque par¹ la voidaunce, salvaunt A.D. 1343. le dreit de eleccion; et pur ceo agarde la COURT *Judicium*.² qe le Roi eit bref al Evesqe.³

(18.) ⁴ § Une femme par default soun baroun fut resceu, &c. Et demanda jugement du bref, qar ou⁵ le bref suppose qe le baroun et sa femme nount entre si noun puis le lees, &c., le baroun trova sa femme seisi, issint qe lentre la femme serreit⁶ seulement suppose, et par ceo bref est suppose qil entrerent⁷ en comune, qest faux.—*Pult.* Ele est resceu,

Entre
[en] le
post vers
le baroun
et sa
femme.
La femme
fut resceu,
et pleda al
abatement

¹ Harl., and C., pur.

² The marginal note is from 25,184 alone.

³ The judgment, according to the roll, was as follows:—

“ Quia dominus Rex supremus
“ patronus dicti decanatus, sicut
“ cæterarum dignitatum et por-
“ tionum dictæ ecclesiæ sancti
“ Petri Eboraci jure suo regio
“ existit, et, sede Archiepiscopali
“ vacante, advocaciones dignita-
“ tum, præbendarum, seu portionum
“ quarumcunque in ecclesia præ-
“ dicta immediate habere dinosci-
“ tur, qui quidem decanatus de
“ fundatione progenitorum domini
“ Regis quondam Regum Angliæ
“ diversis possessionibus pro diver-
“ sis operibus caritatis faciendis et
“ sustentandis a dictis progenitori-
“ bus est dotatus, et dominus Rex
“ jura Coronæ suæ ne pereant
“ illæsa conservare tenetur, et sic
“ ex plenitudine potestatis suæ,
“ quotiens necesse fuerit, de juribus
“ suis prædictis poterit providere,
“ et prædictus Archiepiscopus nihil
“ clamat in advocacione dicti
“ decanatus, nec dedicit dictum
“ decanatum fore vacantem, nec
“ prædictum Capitulum aliquid
“ clamat, seu per aliqua per

“ ipsum præallegata in advocacione
“ prædicta clamare potest, et etiam
“ cognovit dictum decanatum
“ tempore quo Archiepiscopatus
“ prædictus in manu Regis extiterat
“ vacasse, et adhuc vacare, vide-
“ tur Curis quod rationibus
“ prædictis prædictus Archiepisco-
“ pus nec prædictum Capitulum
“ ipsum dominum Regem, qui
“ sic dictæ advocacionis possessor
“ comprobatur, de præsentatione
“ sua inde habenda excludere seu
“ impedire possint seu debeant.
“ Et ideo consideratum est quod
“ dominus Rex recuperet præsen-
“ tationem suam versus eos ad
“ decanatum prædictum. Et
“ habeat breve Archiepiscopo Ebor-
“ censi, loci Diocesano, quod, non
“ obstante reclamacione prædic-
“ torum Archiepiscopi et Capituli,
“ ad præsentationem domini Regis
“ ad decanatum prædictum ido-
“ neam personam admittat. Et
“ iidem Archiepiscopus et Capitu-
“ lum in misericordia.”

⁴ From L., Harl., 25,184, and C.

⁵ C., od.

⁶ L., serra.

⁷ L., le bref veot lour entre,
instead of par ceo bref est suppose
liq entrerent.

No. 19.

A.D. 1348. admitted, and she cannot abate the writ except by some plea which would turn to her mischief if she did not have it, such as joint tenancy, or something to falsify the alleged entry in a writ within the degrees, because otherwise she would lose warranty, whereas now it is given to her to vouch at large.—**SHARDELOWE.** It is different in the case of a wife, who is named in the writ, from what it would be in the case of a stranger who was not named, for she shall well have a plea to the writ.—*Pulteney.* Then you see plainly how this writ is in the *post*, which does not suppose the entry of the husband and of his wife in common at one time, but supposes that both entered since, &c., and it is true that both entered since, &c.; wherefore the writ is good; but it is otherwise in respect of a writ within the degrees.—**SHARDELOWE.** The writ in the *post* is good as brought in this way; and therefore answer.—*Gaynesford.* Again, judgment of the writ: for the wife entered by the same person to whom the lease is by the writ supposed to have been made, and so he might have had a writ within the degrees.

Trespass
in respect
of goods
carried
off.

(19.) § William Dacre sued a writ in respect of his goods and chattels carried off, and counted as to capons and other goods carried off.—*Thorpe.* Capons are living chattels, which cannot be included under the name of goods and chattels, but the writ should be in the words "*tot capones, vel altilia*"; and in a Replevin

No. 19.

ge ne poet bref abatre² sil ne fut par plee qe luy A.D. 1343.
 tournereit en meschief si ele nel ust, come jointen- du bref, et
 ance, ou fauxer dentre en bref deinz les degres,³ suppose lentre le
 pur ceo qele perdreit autrement garrantie, mes a baroun, pur ce qil
 ore vouchér a large luy est done.—SCHARD. Il est trova la
 autre de femme, qest nome en le bref,⁴ qe ne serreit femme
 destrange qe ne fut pas nome, qar ele avera bien⁵ seisi.
 plee au bref.—*Pult.* Donques vous veiez bien coment *Non*
 ceo bref est en le *post*, qe ne suppose pas lentre *allocatur*
 le baroun et sa femme⁶ en comune a un temps, *Postea* ele
 mes suppose⁷ qe lun et lautre sont entres puis,⁸ *Postea* ele
 &c., et cest verite qe lun et lautre sont entres *en le per.*¹
 puis⁹; par quei le bref est bon; mes deinz les 668.]
 degres est autre.—SCHARD. Le bref en le *post* est
 bon par ceste voie; et pur ceo¹⁰ responez.—*Gayn.*
 Unqore, jugement du bref: qar la femme entra par
 mesme celui a qi le lees est suppose estre fait par
 le bref, issint put il aver eu bref¹¹ deinz les degres.

(19.)¹² § William Dacre¹⁴ suist bref de ses biens Trespas
 et chateux emportez,¹⁵ et counta des chapouns et des biens
 autres biens emportez.¹⁵—*Thorpe.* Chapouns sont empor-
 chatel vifs, qe ne pount estre compris souz¹⁶ le *tez.*¹³
 noun des biens et¹⁷ chateux; mes le bref serreit [Fitz.,
Briefe,
 669.]
*tot capones,*¹⁸ *vel altilia*; et en un *Replegiari* homme

¹ The marginal note, except the word *Entre*, is from 25,184 alone, though a portion of it seems to have been copied in a later hand in Harl. The note in L. is simply *Resceite*.

² L., *pleder en abatre*, instead of *bref abatre*.

³ 25,184, *grees*.

⁴ The words *en le bref* are from L. alone.

⁵ L., and 25,184, *boun*.

⁶ L., *lour entre*, instead of *lentre* le baroun et sa femme.

⁷ *suppose* is omitted from L.

⁸ 25,184, and C., *post*.

⁹ *puis* is from L. alone.

¹⁰ L., *par quei*, instead of *et pur ceo*.

¹¹ The words *en bref* are omitted from L.

¹² From L., Harl., 25,184, and C.

¹³ The marginal note, except the word *Trespas*, is from 25,584 alone.

¹⁴ L., *Darci*.

¹⁵ *emportez* is omitted from L.

¹⁶ L., *sour*; Harl., *south*; C., *suz*.

¹⁷ The words *biens et* are omitted from L.

¹⁸ L., *caupones*; 25,184, *chapouns*.

No. 20.

A.D. 1343. one would have in respect of a like taking a writ in the words "*Replegiari facias averia*," and not "*bona et catalla*."—HILLARY. Answer; we hold the writ to be good.—Thorpe. Not Guilty; ready, &c.—And the other side said the contrary.

Cosinage. (20.) § Cosinage. A last seisin was alleged in abatement of the writ.—Grene. By his seisin you cannot abate our writ, because he was born before wedlock.—Rokele. That is not an answer, unless you say outright that he is a bastard.—SHARDELOWE, *ad idem*. That is only to take issue on the cause, and not on the substantial fact; and, in case any one demands as heir, it is possibly sufficient to rebut him on the ground that he was born before wedlock, but where he is tenant it is otherwise, because he shall not be estranged from his possession except by a plea as to the right, and you are, as it were, in the same case, for your object is to avoid, by the cause which you mention, the seisin of that person which is alleged in abatement of the writ.—Grene. I am not in such a case, for if he were tenant, the law would put me to answer him, but now the law does not put me to answer as to the seisin alleged in this particular person; and inasmuch as he does not deny that which I have alleged, and makes no other answer, judgment.—HILLARY. Both the one issue and the other are now to one and the same effect, and susceptible of enquiry in this Court, and be he tenant or demandant in whose person such a disability is alleged, that is sufficient; and it has been seen upon a writ of Right that it was taken and accepted for a plea that the party was born before wedlock, and this is, as to the right, putting it as high

Last seisin avoided on the ground that the person seised was born before wedlock, and exception was taken to this plea because it did not say outright that he was a bastard. The exception was not allowed.

No. 20.

avereit de tiele prise *Replegiari facias averia* et noun A.D. 1343.
pas *bona et*¹ *catalla*.—HILL. Respondez; nous tenoms
le bref bon.—Thorpe. De rien coupable; prest, &c.
—*Et alii e contra*.

(20.)² § Cosinage. Derreine seisine fut allegge al Cosinage.
abatre du bref.—Grene. Par sa seisine ne poez Derrrein
nostre bref abatre, qar il nasquit avant les esposailles. seisine
—Rokel. Ceo nest pas respouns,⁴ si vous ne diez tant qil
pleinement bastarde.—SCHARD., *ad idem*. Ceo nest nasquist
forsqe prendre lissu sur la cause, et noun pas sur espo-
le gros; et, en cas qe homme demande come heir, saillies, qe
il suffit par cas de luy reboter pur ceo qil nasquit⁵ fut chal-
avant les esposailles, mes ou il est tenaunt il est enge pur
autre, pur ceo qil ne serra⁶ pas estraunge de sa dit pas
possession forsqe par parole de⁷ dreit, et vous estes pleine-
auxi come en mesme le cas, qar la seisine celuy ment
qest allegge al abatre⁸ du bref vous estes a voider Non
par la cause qe vous dites.—Grene. Jeo ne su pas *allocatur*.³
en tiel cas, qar, sil fut tenaunt, ley moy mettreit a
respoudre a luy, mes a ore a seisine allegge en
la persone celuy⁹ ley ne moy mette pas a respoudre;
et, de si come il ne dedit pas ceo qe jay allegge,
et autre rien ne respound, jugement.—HILL. Lun
issu et lautre est ore a un mesme effect, et en-
querable ceinz, et soit il tenaunt ou demandant en
qi persone tiele nounablete¹⁰ est allegge, ceo suffit;
et homme ad vewe qen bref de Dreit. ceo fut pris
pur plee, et accepte, qe la partie nasquit avant les
esposailles, et auxi haut est ceo en dreit come

¹ The words *bona et* are omitted from L.

² From L., Harl., 25,184, and C.

³ The marginal note, except the word Cosinage (in L., Cosonage) is from 25,184 alone. There is another in Harl., which has been partly cut away in binding.

⁴ 25,184, pur rien instead of pas respouns.

⁵ Harl., nasquit par cas.

⁶ 25,184, nest, instead of ne serra.

⁷ L., plee en le, instead of parole de.

⁸ L., en abatement, instead of al abatre.

⁹ celuy is omitted from L.

¹⁰ L., nounablite.

No. 21.

A.D. 1348. as saying bastard.—SHARDELOWE. Certainly, I saw Sir Ralph de Hengham blame Bereford for such an issue.—*Grene*. We have tendered the averment at the peril which appertains to it, and that averment he refuses; judgment.—*Rokele*. He was born in wedlock; ready, &c.—And the other side said the contrary.—SHARDELOWE dissented.

On the
return of
the *Cape*

(21.) § On the return of the *Cape*, *Richemunde*, for

No. 21.

bastard.—SCHARD. Certes, jeo vie Sire Rauf¹ de A.D. 1843.
 Hingham² blamer Berr. pur un tiel issu.—*Grene*.
 Nous lavoms tendu a peril qappent, quel averement
 il refuse; jugement.—*Rok*. Il nasquit deinz³ les
 esposailles; prest, &c.—*Et alii*⁴ e contra.—SCHARD.
murmuravit.⁵

(21.) ⁶ § Al *Cape* retourne, *Richem.* se prist a la Al *Cape*

¹ 25,184, Robert.

² L., Hyngham; 25,184, and C., Henham.

³ Harl., deyns, the letters yns being in a later hand; 25,184, devant; C., devant deinz.

⁴ C., *alius*.

⁵ The words SCHARD. *murmuravit* are omitted from C.

⁶ From L., Harl., 25,184, and C. The case appears among the *Placita de Banco*, Trin. 17 Edw. III., R^o 22, in the form following:—

“Warr.—Ricardus Reynbaud alias in Curia hic petiit versus Adam in the Wythehes de Longa Ichyntone unum mesuagium, quatuor acras terræ et dimidium, et unam acram prati, cum pertinentiis, in Herdwyke et Mershtone Prioris ut jus &c., ita quod prædictus Adam summonitus fuit essendi hic, scilicet a die Paschæ in xv dies anno regni domini Regis nunc Angliæ sexto decimo, ad respondendum prædicto Ricardo de prædicto placito. Ad quem diem prædictus Adam fecit se essoniari de malo veniendi versus prædictum Ricardum de prædicto placito, et habuit inde diem per essonium suum hic usque in Octabis Sancti Michaelis tunc proxime sequentibus, &c. Ad quem diem prædictus Adam se

“fecit essoniari de servitio domini Regis, et habuit inde diem per essonium suum hic, scilicet in Octabis Sancti Hillarii proxime sequentibus, &c. Ad quem diem prædictus Adam fecit defaultam, ita quod tunc præceptum fuit Vicecomiti quod caperet prædicta tenementa in manum domini Regis, et diem &c., et quod summoneret eum &c., quod esset hic ad hunc diem, scilicet in Octabis Sanctæ Trinitatis ad respondendum prædicto Ricardo tam de principali placito quam de prædicta defaulta, &c. Et Vicecomes modo testatur diem captionis, et quod summonuit, &c.

“Et modo venit tam prædictus Adam quam prædictus Ricardus Et prædictus Ricardus præcise se capit ad prædictam defaultam quam prædictus Adam fecit hic ad præfatas Octabas Sancti Hillarii proxime præteritas.

“Et prædictus Adam dicit quod defaulta illa ei nocere non debet in hac parte, quia dicit quod ipse nunquam summonitus fuit essendi hic ad præfatam Quindenam Paschæ ad respondendum prædicto Ricardo de prædicto placito, nec ad diem

No. 22.

A.D. 1343. the demandant, held to the tenant's default.—*Moubray*.
 default Not summoned according to the law of the land ;
 was saved, ready to prove it by our law.—*Blaykeston*. Do you
 on the ground of mean that for your answer ?—*Moubray*. Yes, certainly.
 non-*Blaykeston*. He was essoined by a common essoin,
 summons, and also as being on the King's service, and that
 by wager he must deny just as much as the summons, and
 of law, perform his law that he did not cause himself to
 notwithstanding that the be essoined, as well as in respect of the non-summons,
 party did not wage and he does not deny it ; judgment.—*HILLARY*. You
 in respect of an hold only to the default, and therefore that is suffi-
 essoin cast cient to save him.—*Richemunde*. You cannot do it
 for him.¹ in any other way.—*HILLARY*. Then do you refuse the
 wager of law ?—*Richemunde* then accepted it.—And
 therefore the wager was entered,¹ and pledges, &c.

Formedon (22.) § Formedon upon a gift made to the father.—
 where the

¹ As to this, see the record, p. 547, note 6.

No. 22.

default pur le demandant.—*Moubray*. Nient somons A.D. 1343.
 par ley de terre; prest a faire par² nostre³ ley.—*defant*
Blayk. Voilletz ceo pur respouns?—*Moubray*. Oil, noun
 certes.⁴—*Blayk*. Il fut essone de comune essone,⁵ et somons
 auxi de service le Roi,⁶ quele chose il covient de par gager
 fendre si avant come la somons, et si bien faire la non
 ley de ceo qil ne se fit⁷ pas essoner come de la obstante
 nounsomons, et ceo ne defend il pas; jugement.—*pas*
HILL. Vous pernez forsque a la default, par quei cele jettu pur
 suffit de luy⁸ salver.—*Richem*. Autrement ne puisiez luy.¹
 faire.—*HILL*. Donques refusez la ley?—*Richem*. laccepta
 donques.—Par quei le gager fut entre, et plegges,
 &c.⁹

(22.)¹⁰ § Formedon dun doun fait al pere.—*Blayk*. Forme-
 doun ou

"illum fecit se essoniari de malo
 "veniendi versus prædictum
 "Ricardum de eodem placito,
 "nec ad præfatas Octabas Sancti
 "Michaelis tunc proxime se-
 "quentes fecit se essoniari de
 "servitio domini Regis prædicto
 "versus prædictum Ricardum de
 "eodem placito. Et hoc paratus
 "est defendere contra ipsum et
 "sectam suam sicut Curia con-
 "sideraverit.

"Et vadiet ei inde legem
 "suam se duodecima manu."

Adam, in the end performed his
 law, and had judgment in his
 favour.

¹ The marginal note is from
 25,184 alone. In L., the note is
Nota, and in Harl., *Cape*. In C.,
 there is none.

² L., par my.

³ L., sa.

⁴ L., Sire, oil, instead of Oil,
 certes.

⁵ The words de comune essone
 are omitted from Harl.

⁶ essone is inserted after Roi in
 L.

⁷ L., fut, instead of se fit.

⁸ The words de luy are from L.
 alone.

⁹ The words attributed to *Richemunde* are, in L., *accepta la lei*.
 The last sentence is omitted.

¹⁰ From L., Harl., 25,184, and C.

The corresponding record appears
 to be among the *Placita de Banco*,
 17 Edw. III., R^o 118. The action
 was brought by Richard del Hille, of
 Dunham, against Walter del Hille
 of Scothorne (Scothern) and Con-
 stance his wife, who vouched John de
 Malberthorpe and Dulcia his wife
 to warrant, in respect of tenements
 in Scothorn (Lincolnshire). The
 alleged gift was by William Orger
 of Thorgramby to Thomas del
 Hille of Dunham, and Mabel his
 wife, in special tail, the demandant
 being their son and heir. Dulcia
 was admitted to defend on the
 default of her husband John de
 Malberthorpe.

No. 22.

A.D. 1343. *Blaykeston*. Your grandfather by this deed enfeoffed us with warranty; judgment.—*Thorpe*. We tell you that the grandfather at the same time held at the will of our father, without this that he had any other estate, so that what you call a feoffment was a disseisin to our father; judgment whether by this deed you can bar us.—*Blaykeston*. That is tantamount to saying that nothing passed by the deed; ready, &c., that what was conveyed did pass.—*HILLARY*. And will you not say anything else?—*Blaykeston*. He was seised as of freehold; ready, &c.—And the other side said the contrary.

No. 22.

Vostre aiel par ceo fait nous enfeffa² ove³ garrantie; A.D. 1343. jugement.⁴—*Thorpe*. Nous vous dioms qe laiell a feffement mesme le temps tient a la volunte nostre pere, cestre est saunz ceo qe autre estat avoit, issint qe ceo qe vous voide pur appelez feffement fut disseisine a nostre pierre⁵; navoit jugement si par ceo fait nous puissez barrer.⁶—*Blayk*. forqe a Taunt amounte qe rien ne passa par le fait⁷; prest, volunte a &c., qe si.⁸—*Hill*. Et autre chose ne voillez dire? temps del feffement.¹ —*Blayk*.⁹ Il fut seisi come de fraunctenement; prest, [Fitz., &c.—*Et alii e contra*.¹⁰ Garraunte, 21.]

¹ The marginal note, except the word Formedoun, is from 25,184 alone.

² 25,184, and C., feffa.

³ C., od.

⁴ Dulcia's plea, according to the record, was "quod quidam Ricardus "de le Hil de Scostorne, avus "prædicti Ricardi del Hille de "Dunham, cujus heres ipse est, "per chartam suam tenementa "prædicta dedit prædictis "Johanni et Dulciæ habenda et "tenenda sibi et heredibus de "corporibus suis exeuntibus, &c., "et obligavit se et heredes suos ad "warantiam, &c., unde dicit quod si "ipsa ab aliquo extraneo de prædictis tenementis implacitaretur, "prædictus Ricardus del Hille de "Dunham, ut heres prædicti "Ricardi de le Hil de Scostorn "teneretur ei prædicta tenementa "warantizare, &c. Et profert "hic in Curia quandam chartam "sub nomine prædicti Ricardi de "le Hil de Scostorne, quæ donationem et warrantiam prædictas "testatur, &c. Et petit judicium," &c.

⁵ The words a nostre pierre are from L. alone.

⁶ Richard's replication, according

to the roll, was "quod ipse per "chartam prædictam ab actione "sua excludi non debet, &c., quia "dicit quod prædictus Ricardus "de le Hil de Scostorne, avus, " &c., tempore confectionis prædictæ chartæ nihil habuit in "prædictis tenementis nisi ad "voluntatem prædicti Thomæ "patris ipsius Ricardi del Hille de "Dunham. Et hoc paratus est "verificare &c. Et petit judicium."

⁷ The words par le fait are from L. alone.

⁸ L., Harl., and 25,184, cy.

⁹ 25,184, *Blaxt*.

¹⁰ The replication is followed immediately on the roll by Dulcia's rejoinder "quod prædictus Ricardus de le Hil de "Scostorne, avus, &c., tempore "confectionis chartæ prædictæ "fuit seisis de prædictis tenementis ut de libero tenemento." Upon this issue was joined. A verdict was given at *Nisi prius* "quod Ricardus del Hille de "Scosthorne, avus, &c., tempore "confectionis scripti prædicti "habuit liberum tenementum in "tenementis prædictis, et non "tenuit ad voluntatem prædicti

No. 23.

A.D. 1343. (23.) § Emma late wife of Ralph Botiller¹ demanded dower. The husband's heir was vouched in a foreign County, and he appeared, and entered into warranty, and rendered the demand as one having nothing by descent. The tenant said that he had assets; ready, &c.—And the other side said the contrary.—*Gaynesford*. Now we pray judgment for the demandant -since he is vouched in a foreign County. —*Thorpe*. Not before the issue is tried.—*HILLARY*. The Court adjudges that she do recover against the tenant, and sue you over the averment for having to the value.

A.D. 1343. (23.) § Emma late wife of Ralph Botiller¹ demanded dower. The husband's heir was vouched in the same County, and in a foreign County also, and he appeared, and rendered dower as one having nothing by descent; and the woman recovered against the tenant.

¹ As to these names see p. 553, note 1..

No. 23.

(23.) ¹ § Emme qe fut la femme Rauf Botiller A.D. 1343. demanda dowere. Leir² le baroun fut⁴ vouche en forein Counte, qe vint, et entra, et⁵ come celuy qe rien nad par descende, rendist⁶ la demande. Le tenaunt dit qil avoit assetz; prest, &c.—*Et alii e contra.*—*Gayn.* Ore prioms jugement pur la demandante desicome il est⁷ vouche en forein Counte. —*Thorpe.* Noun pas avant lissue trie.—*HILL.* La COURT agarde qele recovere vers le tenaunt, et suez outre⁸ laverement pur vostre value.⁹

Dowere.
Leir le
baroun
vouche en
mesme le
counte, et
en forein
auxi, qe
vint, et
rendist
come cely
qe nad par
descende;
et la
femme
recoveri
vers le
tenant.³

"Thomæ patris prædicti Ricardi
"del Hulle de Dunham."

Judgment was accordingly given
in favour of Dulcia.

¹ From L., Harl., 25,184, and C. As in the report Y. B. Mich. 16 Edw. III., No. 88, the name Ralph Botiller appears to have been substituted for Theobald Russel. According to the *Placita de Banco*, Trin. 17 Edw. III., R^o 240, an action was brought by Eleanor late wife of Theobald Russel against Master Roger Cantok in respect of a third part of a moiety of the manor of Herdewyke (Hardwick, Bucks) and of the advowson of the church of Herdewyke. The tenant vouched Ralph son and heir of Theobald, who now appeared in answer to a summons to him in the County of Somerset, and warranted "tanquam heres prædicti Theobaldi sanguine, nihil habens per descensum hereditarium de eodem Theobaldo in feodo simpliciter. Et reddidit prædictæ Alianoræ prædictam dotem suam," &c.

The tenant then pleaded that Ralph the heir, when vouched, had

lands and tenements of sufficient value at Southchuryton (South Cheriton, Somerset) which descended to him from his father in fee simple. Issue was joined upon this.

"Et super hoc prædicta
"Alianora instanter petit seisinam,
"de prædicta dote sua sibi
"adjudicari. Ideo consideratum
"est quod prædicta Alianora
"recuperet inde seisinam suam
"versus prædictum Rogerum, et
"idem Rogerus habeat de terra
"prædicti Radulfi ad valentiam,"
&c.

Process having been continued on the issue, Roger in the end failed to appear, and judgment was given in favour of Ralph.

² The marginal note, except the word Dowere, is from 25,184 alone.

³ L., devers leir.

⁴ L., A. fut.

⁵ et is omitted from L.

⁶ L., et rendist.

⁷ L., ad.

⁸ L., and 25,184, ore.

⁹ The words pur vostre value are omitted from L.

[Fitz.,
Jugement,
114.]

Nos. 24, 25.

A.D. 1343. (24.) § A tenant had heretofore vouched, and now, *Sequatur suo periculo* entered, notwithstanding that the tenant said that the vouchee was dead. And he would have re-vouched.

at the *Pluries Summoneas ad warrantizandum*, the Sheriff returned "*quod nihil habet unde potest summoneri.*"—*Grene*. We pray the *Sequatur suo periculo*.—*Moubray*. The tenant tells you that the vouchee is dead, and wishes to revouch his heir.—*HILLARY*. If the demandant will admit the death, well and good; and, if not, it will come by the Sheriff's return, for it will not be tried by averment.—*Moubray*. That will be a mischief, because the Sheriff will possibly return again as he now does, and then we shall lose our land while we cannot sue against him, and so by no default of our own.—*HILLARY*. Then sue that the Viscount make his return as he ought to do, and that we suppose he will, and therefore enter the *Sequatur suo periculo*.—*Quere*, if he be dead, whether the tenant will be able to have *Warrantia Chartæ* against the heir, since he cannot have a voucher.

View counter-pleaded because the party had it upon another writ, and he was ousted from it, the demand being in several villis.

(25.) § *Pulteney* demanded view.—*Gaynesford*. Heretofore we brought a like writ against you in K., and, after view, you said that parcel of our demand was in L., and now our writ is brought in accordance with that which you gave us, in K. and L.; judgment whether you ought to have view.—*Pulteney*. It is a different demand, because in the first writ no demand was made in L.—*SHARDELOWE*. He has this writ through your giving it to him; wherefore we oust you from view.

Nos. 24, 25.

(24.)¹ § Un tenant avoit autrefoith vouche, et ore, A.D. 1843. al *Summoneas ad warrantizandum sicut pluries*, le *Sequatur suo* Vicounte retourna *quod nihil habet unde potest*² *sum-* *periculo* *moneri*.—Grene. Nous prioms *Sequatur suo periculo*. entre, non *obstante*—Moubray. Le tenant vous dit qe le vouche est qe le mort, et voet revoucher soun heir.⁴—HILL. Si le tenant dist qe le demandant le voet conustre, taunt⁵ bien; et si noun, vouche est ceo vendra par retourn de Vicounte, qar homme le mort. Et triera pas par averement.—Moubray. Ceo serra mes- voleit aver vouches.³ chief, qar par cas le Vicounte retounera autrefoith [Fitz., *Sequatur sub suo periculo*, 8.] come a ore fait, et donques perdroms terre ou nous ne poms pas suyre vers luy, et issint noun pas en nostre default.—HILL. Suez donques qe le Vicounte⁶ face son retourn come faire deit,⁷ et ceo supposoms nous qil voet, et pur ceo entres le *Sequatur suo periculo*.—Quere, sil soit mort, si tenaunt purra aver Garrañ ie de Chartre vers leir, puis qil ne⁸ poet pas aver⁹ vouches.

(25.)¹⁰ § *Pult.* demanda la vewe.—Gayn. Autre- Vieve foith nous portames autiel bref vers vous en K., contre-plede pur et, apres la vewe, vous deistes qe parcelle de nostre ceo qe a demande fut en L., et ore est nostre bref porte autre bref il avoit, et solonc ceo qe vous liverastes, en K. et L.; jugement fut ouste, si la vewe devez aver.—*Pult.* Cest autre demande, qar la de- mande fut en en plus-ours L.—SCHARD. Il ad ceo bref de vostre livere; par villes.¹¹ quei nous vous oustoms de la vewe. [Fitz., *Vieu*, 69.]

¹ From L., Harl., 25,184, and C.

² The marginal note subsequent to the word *periculo* is from 25,184 alone. In L., the note is Voucher a garrantir.

³ L., ubi, instead of *nihil habet unde potest*.

⁴ All the MSS. except L., leir, instead of soun heir.

⁵ C., tenant.

⁶ The words qe le Vicounte are omitted from C.

⁷ L., dust.

⁸ C., nel.

⁹ aver is from L. alone.

¹⁰ From L., Harl., 25,184, and C.

¹¹ In L., demande is substituted for the words after Vieve, which are from 25,184 alone.

Nos. 26, 27.

A.D. 1848. (26.) § Two were vouched simply. The Sheriff
 Voucher of two persons. The Sheriff returned that one was dead; and the tenant was put to re-vouch or to testify that this vouchee was living. returned that one was dead.—*Pole*. We pray that the other vouchee be called.—*HILLARY*. He shall not be unless you testify that he whose death is returned is living, because just as an original writ is abated by such a return so also is a voucher.—*Pole*. By common intendment, when two persons are vouched simply, they are to be bound by their own deed; and, therefore, just as the entirety would accrue by survivorship to the one who might survive, in case the tenancy were continued, so also the charge of the warranty accrues to him and his heirs; wherefore the voucher is still good against him.—*HILLARY*. It is not, for if the two bind themselves and their heirs to warrant, the warranty, after the death of one, will fall upon the survivor and the heirs of the other; and, if both were dead, the heirs of both would warrant; wherefore either you will revouch, or you will allege that the other is living.—*Pole*. We tell you that they were seised as by their joint purchase; wherefore the one who survives shall be sole party.—This was not allowed.—*Gaynesford* revouched the one and the heir of the other.—*Pole* counterpleaded the voucher, as above.—*HILLARY*. Let the voucher stand.

*Scire
facias.*

(27.) § *Scire facias* to have execution of a fine

Nos. 26, 27.

(26.) ¹ § Deux furent² vouches simplement. Le A.D. 1343.
 Vicounte retourna qe lun fut mort.—*Pole*. Nous Voucher
 prioms qe lautre vouche⁴ soit demande.—*HILL*. Noun de deux.
 serra si vous ne tesmoignez qe celui qe mort est Le Vi-
 retourne est⁵ en vie, qar si⁶ bien come bref original counte
 est abatu par tiel retourn auxi bien est voucher.— retourna
Pole. De comune entent, quant deux sount vouches qe lun est
 simplement, ils sount a lier par lour fait demene; mort; et
 et donques si bien come lentier acrestreit par suviver le tenant
 a celui qe surviverait,⁷ en cas qe⁸ la tenance fut est mys de
 continue, si avant acrest la charge de la garrantie revoucher,
 sur luy et ses heirs; par quei le voucher vers luy ou de test-
 uncore⁹ est bon.—*HILL*. Noun est, qar¹⁰ [si les deux moigner
 obligent eux¹¹ et lour heirs a garrantir, la garrantie, la vie
 apres la mort de lun, cherra sur luy qe serreit en lautre.³
 vie et les heirs lautre; et, si touz deux fuissent [Fitz.,
 morts],¹² les heirs de lun et¹³ de lautre¹⁴ garrantiront; Voucher,
 par quei ou vous revoucherez, ou vous alleggerez la 90.]
 vie lautre.¹⁵—*Pole*. Nous vous dioms qils furent
 seisisz come de lour joint purchace; par quei celui
 qe sourvesquyt¹⁶ serra soul partie.—*Non allocatur*.—
Gayn. revoucha lun et leir lautre.—*Pole* le countre-
 pleda, *ut supra*.—*HILL*. Estoise¹⁷ le voucher.

(27.) ¹⁸ § *Scire facias* daver execucion dun fyn *Scire facias*

¹ From L., Harl., 25,184, and C.

² The marginal note, except the word Voucher, is from 25,184 alone.

³ furent is from L. alone.

⁴ vouche is from L. alone.

⁵ L., soit.

⁶ L., auxi.

⁷ L., sourvesquyt.

⁸ L., si, instead of en cas qe.

⁹ uncore is omitted from L.

¹⁰ L., *Non est ita*, qar il et, instead of Noun est, qar.

¹¹ C., heux.

¹² The words between brackets are omitted from L.

¹³ The words de lun et are omitted from L.

¹⁴ L., altrez.

¹⁵ After lautre there are inserted in L. the words et si touz deux furent morts, leir lun et lautre garrantira.

¹⁶ Harl., survyst; 25,184, survist.

¹⁷ C., estoies.

¹⁸ From L., Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Trin. 17 Edw. III.,

No. 27.

A.D. 1343. against Gilbert de Acon.—*Pole*. We tell you, as to parcel, that, at the suit of the Earl of Lancaster, lord of Pickering, which is Ancient Demene of the King, the fine has been annulled in the King's Bench, because the tenements are parcel of the manor of Pickering, and *Pole* made a definite allegation on the point, and said that the Court ought not to have cognisance.—*STONORE*. For whom do you speak? —*Pole*. For the Earl of Lancaster.—*STONORE*. We are not apprised of that which you say, and the party must answer.—*Pole*. We pray that you stay execution, and we will certify you of the record.—*STONORE*. Willingly.—And then, on the morrow, *Pole* alleged the same matter, and prayed that the Court would not proceed, because it would have the effect of putting the lord to a new action of Deceit.—*STONORE*. Then sue that we be certified; but we will see what the party may wish to say.—

No. 27.

vers Gilbert de Acon.—*Pole*. Nous vous dioms qe A.D. 1348.
de parcelle, a la suyte le Counte de Lancastre,
seigneur de Pikerynge, qest Aunciene Demene le Roi,¹
la fyn el Baunk le Roi est anienti, pur ceo qe les
tenementz sount parcelle del maner de Pikerynge,
et alleggea en certain, et dit qe Court ne deit
conustre.—*Ston*. Pur qi parlez vous?—*Pole*. Pur
le Counte de Lancastre.—*Ston*. Nous ne sumes pas
appris de vostre dit, et il covient qe la partie re-
spoigne.—*Pole*. Nous prioms² qe³ vous sursesses,⁴
et nous vous acerteroms del recorde.—*Ston*. Volunters.
—Et puis lendemain *Pole* alleggea mesme la chose,
et pria qe Court nalast pas avant, qar ceo serreit
de remettre le seigneur a novel suyte de Deceite.—
Ston. Suez donques qe nous soioms⁵ acerte⁶; mes
nous verroms ceo qe la partie voudra⁷ dire.⁸—

R^o 813. It there appears that the *Scire facias* was brought on behalf of John son of John Moryn against John de Malton, Gilbert de Acon, and Nicholas de Haldene, who had respectively entered on several parcels of the land. The fine *sur don, grant, et render*, as cited in the *Scire facias* was levied in the seventh year of the reign between John Moryn of Brompton and Dionysia his wife, plaintiffs, and John de Wykham, and John de Snaynton, chaplain, deforciant, in respect of tenements in Brompton, Saldene and Snainton (Yorkshire) which were thereby settled on John Moryn and Dionysia, and the heirs of John's body, "et, si contingeret quod idem Johannes Moryn obiret sine herede de corpore suo procreato, tunc, post decessum ipsorum Johannis Moryn et Dionysie, predicta tenementa integre remanerent Johanni

"filio ejusdem Johannis Moryn et heredibus de corpore suo procreatis," with several remainders over.

¹ The words le Roi are from L. alone.

² C., vous prioms.

³ Harl., qe puis qe.

⁴ L., surcesses; Harl., susesetz.

⁵ L., seioms.

⁶ L., asserte; Harl., ascerte.

⁷ L., voudreit.

⁸ The matter relating to the annulling of the fine in the King's Bench appears on the roll, after the pleadings, and after an adjournment "a die Sancti Michaelis in xv dies," as follows:—

"Et super hoc dominus Rex mandavit Justiciariis hic sub pede sigilli quoddam recordum quod testatur quod predictus finis de tenementis in Bromptone adnullatus est, eo quod tenementa sunt de antiquo dominico coronæ domini Regis.

No. 27.

A.D. 1348. *Moubray*. By the writ the right is supposed to be limited to John Moryn and the heirs of his body begotten, and, if he should die without heir of his body, the remainder to John the son of John Moryn, who now sues; and the writ purports that, inasmuch as John died without heir of his body, the tenements ought to remain to John his son; so the writ supposes that John died without heir of his body, and that he has a son, which is contradictory; judgment of the writ. And we make protestation that John who now brings this writ is not the son of John Moryn.—*Grene*. According to the manner in which he is named in the fine he must be named in the writ; besides, if you will say that John who now sues is issue in the first degree, for which reason he cannot have an action by way of remainder, we will willingly accept that; but exception cannot be taken to any other effect.—*SHARDELOWE*. And suppose your fine be not good, that is to say, that it supposes John to be the son of John, whereas in truth he is not, do you think that this will oust the person against whom the writ is brought, who is a stranger, from his exception?—*HILLARY*. He must be named in accordance with the fine, or otherwise he will not have a writ.—*Moubray*. We tell you that

No. 27.

Moubray. Par bref est suppose le dreit estre taille A.D. 1343.
a Johan Moryn et les heirs de soun corps engendres,¹ et, sil deviaist saunz heir de son corps,² le remeindre a Johan le fitz Johan Moryn, qore suyst; et le bref voet qe par taunt qe Johan morust³ saunz heir de soun corps qe les tenements deivent remeindre a Johan soun⁴ fitz; issint suppose le bref qe Johan morust³ saunz heir de soun corps,⁵ et qil ad fitz, qest contrariaunt; jugement du bref. Et fesoms⁶ protestacion qe Johan qore porte ceo bref nest pas le fitz Johan Moryn.—*Grene.* Solonc ceo qil est nome en la fyn il covient qil soit nome el bref; ovesqe ceo, si vous voillez dire qe Johan qore suyst⁷ est issue⁸ en le primer degre, par quei il ne put aver accion par voie de remeindre, nous le voloms volunters; mes a autre effect ne put ceo⁹ estre chalange.—*SCHARD.* Et jeo pose qe vostre fyn ne soit pas bon, saver, qele¹⁰ suppose qe Johan est le fitz Johan, la ou de verite il nest pas, quidez vous qe ceo oustra celui vers qi le bref est porte, qest estraunge, de son chalange?—*HILL.* Il covient qil soit nome acordaunt a la fyn, ou autrement il navera pas bref.—*Moubray.* Nous vous dioms qe

“ ut de manerio de Pikerynge,
“ quod quidem recordum, simul
“ cum brevi Justiciariis hic
“ misso, remanet inter recorda
“ sine die. Et similiter in præ-
“ dicto recordo continetur quod
“ finis ille levatus fuit de tene-
“ mentis in Snayntone quæ sunt
“ ad communem legem. Et quia
“ prædictus finis levatus fuit de
“ tenementis quæ sunt de antiquo
“ dominico coronæ domini Regis,
“ et de tenementis quæ sunt ad
“ communem legem, nondum visum
“ est Curie quid in hac parte
“ fuerit faciendum. Ideo, quo ad

“ hoc, judicium respectuatur ad
“ præfatam Quindenam Sancti
“ Michaelis,” &c.

¹ engendres is from L. alone.

² L., &c., instead of de son corps.

³ Harl., muruyst.

⁴ Harl., com a.

⁵ All the MSS., except L., soi, instead of soun corps.

⁶ L., fasoms.

⁷ L., porte ceo bref.

⁸ L., soit, instead of est issue.

⁹ L., il.

¹⁰ L., le quel, instead of saver qele.

No. 27.

A.D. 1343. Peter de Morers took to wife one Alice, between whom this John who now demands execution issued in wedlock; and we demand judgment whether he ought to be admitted to this suit as son of John Moryn.—*Richemunde*. You see plainly how we demand, not as heir, because on that intendment we should abate our own writ because then we should be issue in the first degree, but we demand as a stranger who is purchaser, in which case that which he alleges, in order to estrange us from the blood, is not to the purpose; wherefore, since he does not show that there is any other John but us, and does not deny that we are the same person to whom the remainder was limited, we pray execution.—*HILLARY*. Then is it so? And whether there be another John son of John or not is immaterial, but it is sufficient to prove you a stranger. Now he has shown that you are John son of Peter, and not John son of John.—*Grene*. John who brings this writ is John son of John, and not son of Peter; ready, &c.—*SHARDELOWE*. You shall not be admitted to that averment, because he has shown how John was born in the wedlock between Peter and Alice his wife, in which case by no law shall be adjudged to be any one but son of Peter.—*Grene*. And I cannot

No. 27.

P. Morers¹ prist femme une A., entre queux cesty A.D. 1343 Johan gore demande execucion² issit deinz les esposailles; et demandoms jugement si come fitz Johan Moryn a ceste suyte deive estre resceu.³—*Richem.* Vous veiez bien coment nous demandoms, noun pas come heir, qar a cel entent nous abateroms nostre bref pur ceo qe donques nous serroms issue en le primer degre, mes demandoms come estraunge purchaceour, en quel cas ceo qil allegge de nous estraunger du saunk nest pas a purpos; par quei,⁴ desicome il ne moustre pas qil y ad autre Johan qe nous, et ne dedit pas qe nous sumes mesme la persone a qi le remeindre fut taille, prioms execucion.—*HILL.* Donques est il issint? Et sil y eit autre Johan le fitz Johan ou noun il nad quei faire, mes suffit de vous estraunger. Ore ad il moustre qe vous estes Johan fitz Piers, et noun pas Johan⁵ fitz Johan.—*Grene.* Johan qe⁶ porte ceo bref est Johan fitz Johan, et noun pas fitz Piers; prest, &c.—*SCHARD.* A cel averement ne serrez resceu, qar il ad moustre coment il nasquit deinz les esposailles⁷ entre Piers et A. sa femme, ou par nulle ley il serra jugge forsqe fitz Piers.—*Grene.* Et a les

¹ L., and 25,184, Moreyn; C., Mores; Harl., gore.

² execucion is from L. alone.

³ According to the record John de Malton and Nicholas de Haldene pleaded non-tenure, which was admitted in the case of Malton, but upon which issue was joined in the case of Nicholas. The plea on behalf of Gilbert de Acon was "quod prædictus Johannes ut filius prædicti Johannis Moryn executionem versus ipsum habere non debet, quia dicit quod quidam Petrus de Morers cepit quandam Aliciam in uxorem, qui quidem Johannes qui nunc

"petit executionem, &c., natus fuit et procreatus durantibus desponsalibus, &c., inter ipsos Petrum et Aliciam, et petit judicium si prædictus Johannes, ut filius ipsius Johannis Moryn, executionem habere debeat," &c.

⁴ L., et, instead of par quei.

⁵ Johan is omitted from L., and 25,184.

⁶ L., celui, instead of Johan qe.

⁷ The reports of the year 17 Edward III. end here abruptly in L. in the middle of a page, on the lower part of which are some rough notes and sketches.

No. 27.

A.D. 1343. have an answer as to the marriage between Peter and Alice; wherefore it is sufficient for me to maintain that he is the son of John and not of Peter.—**STONORE.** Certainly not; but it can well be proved who was his mother, but never who was his father, except by marriage; and therefore you must assign a marriage between John Moryn and his wife, and say that John is issue during that marriage, in order to prove him son in the same manner as the other side has disproved it.—*Grene.* We do not demand as heir, but as son, which is only in place of a surname; and that which he pleads is to no other effect than to prove that we are the son of Peter, and not the son of John; but we are the son of John; ready, &c.; and he refuses this averment; judgment.—*Thorpe.* And you demand as son of John, as one who is his son *de rei veritate*; and we have proved by a special fact that you must be in law the son of another person, to wit the son of Peter, and not the son of John; and this fact we offer to aver, and you refuse the averment; judgment.—And so to judgment.

No. 27.

esposailles entre Piers et A. ne puis jeo aver¹ re- A.D. 1343
 spouns; par quei il moy² suffit de maintenir qil
 est le fitz Johan, et noun pas de Piers.—*Ston.*
 Nanil certes; mes qi fut sa mere homme purra bien
 prover, mes qi fut soun pere jammes,³ forsqe par⁴
 esposailles; et pur ceo il covient qe vous donez
 esposailles entre Johan Moryn et sa femme, et qe
 cestuy soit issue deinz celes esposailles, issint qe
 vous le provez fitz auxi come il lad desprove.—
Grene. Nous demandoms pas come heir, mes come
 fitz, qest forsqe en lieu de surnoun; et ceo qil plede
 nest a autre effect mes a prover qe nous sumes⁵
 le fitz Piers, et noun pas le fitz Johan; mes nous
 sumes le fitz Johan; prest, &c.; quel averement il
 refuse; jugement.⁶—*Thorpe.* Et vous demandez come
 fitz Johan, come celui qest son fitz *de rei veritate*;
 et par le fait especial avoms prove qe vous serrez
 de ley autri fitz, saver, le fitz Piers, et noun pas le
 fitz Johan; et cel fait tendoms daverer, quel avere-
 ment vous refusez; jugement.—*Et sic ad judicium.*⁷

¹ 25,184, and C., reaver.

² 25,184, ne.

³ 25,184, noun pas.

⁴ 25,184, en.

⁵ 25,184, soms.

⁶ The replication was, according to the roll, "quod ipse petit executionem, virtute finis prædicti, ut extraneus, &c. Et quo ad hoc quod prædictus Gilbertus supponit ipsum esse progenitum et natum infra desponsalia, &c., inter prædictos Petrum et Aliciam, in hoc supponendo ipsum esse filium prædicti Petri natum infra desponsalia inter eosdem Petrum et Aliciam, et non filium Johannis Moryn, ipse est filius prædicti Johannis Moryn, et pro tali cognitus et

"nominatus. Et hoc paratus est verificare, unde petit judicium et executionem," &c.

⁷ The pleadings subsequent to the replication appear upon the roll as follows:—"Et Gilbertus dicit quod ex quo ipse paratus est verificare quod prædictus Johannes fuit natus et procreatus inter ipsos Petrum et Aliciam infra desponsalia, &c., quam verificationem prædictus Johannes non admittit unde petit judicium," &c.

"Et Johannes dicit quod ex quo ipse paratus est verificare quod ipse est filius prædicti Johannis Moryn, et pro tali nominatus et cognitus, et non filius prædicti Petri, et idem

No. 28.

A.D. 1343. (28.) § Replevin in respect of two beasts.—*Thorpe*
Avowry in avowed as to twelve cows, and in a different place,
respect of for suit to a Hundred Court from three weeks to
beasts other than three weeks.—And note that in this plea was touched
those of the point that an avowry for services in arrear is
which the taking was not good in a hamlet.—*Blaykeston*. He took two
supposed ; and they beasts, as we suppose by our plaint ; ready, &c.—
were at a
traverse as

No. 28.

(28.)¹ § *Replegiari* de deux affres.—*Thorpe* avowa A.D. 1848.
 de xij vaches, et en autre lieu, pur suyte a Hundred Avowere
 de iij semaines en iij semaines.²—*Et nota* qen ceo des altres
 plee fut touche qe avowere pur services arrere nest affres qe
 pas bon en hamel.³—*Blayk*. Il prist ij affres, come la prise ne
 nous supposoms par nostre plainte; prest, &c.⁴—sont a
 travers des

"Johannes filius Johannis petit
 "executionem ut extraneus, &c.,
 "virtute finis prædicti, petit judi-
 "cium et executionem," &c.

After several adjournments
 "prædictus Johannes filius Jo-
 "hannis non est prosecutus."

¹ From Harl., 25,184, and C.,
 but corrected by the records of the
 two actions *Placita de Banco*,
 Trin. 17 Edw. III., R^o 108, and
 R^o 108, d. It appears on R^o 108
 that an action was brought by the
 Abbot of Ford against Ralph
 Daubyny, Walter Wodeman and
 Walter Baret, because according to
 the declaration "in villa de Leighe
 " [Somerset] in quodam loco qui
 " vocatur Bradelegh ceperunt duos
 " affros ipsius Abbatis."

² According to the record "Ra-
 "dulfus pro se et omnibus aliis
 "advocat prædictam captionem
 "in quodam loco qui vocatur
 "Shortelonde, et juste, &c., dicit
 "enim quod Leyghe, Whateleghe,
 "Strete, et Fordebridge sunt
 "quatuor hameletta villæ de
 "Wynsham et sunt infra Hundred-
 "um de Southpedertone, cujus
 "quidem Hundredi ipse Radulfus
 "est dominus, et ad quod
 "Hundredum omnes libere tenentes
 "infra Hundredum illud debent
 "facere sectam de tribus septi-
 "manis in tres septimanas, de
 "qua quidem secta Radulfus

"Daubyny, avus ipsius Radulfi
 "Daubyny, cujus heres ipse est,
 "fuit seisisus per quendam
 "Willelmum Gockon ad tunc
 "tenentem unius tofti, viginti
 "acrarum terræ, et septem
 "acrarum moræ, cum pertinentiis,
 "in Whateleghe, unde prædictus
 "locus in quo, &c., est parcella,
 "quæ quidem tenementa prædic-
 "tus Abbas modo tenet, &c., et
 "unde una secta debetur ad
 "Hundredum prædictum de tribus
 "septimanis in tres septimanas,
 "et de qua secta omnes ante-
 "cessores prædicti Radulfi seisisi
 "fuerunt a tempore quo non
 "extat memoria de illis qui
 "terras et tenementa prædicta
 "tenuerunt, &c. Et quia secta
 "prædicta per quindecim annos
 "ante diem captionis prædictæ
 "eidem Radulfo a retro fuit, pro
 "prædicta secta de primis sex
 "annis prædictorum quindecim
 "annorum cepit ipse novem
 "vaccas in prædicto loco, de
 "Shortelonde ut parcella tene-
 "mentorum prædictorum, prout
 "ei bene licuit," &c.

³ Harl., hamelle.

⁴ The Abbot's plea, according to
 the roll, was "quod prædictus
 "Radulfus cepit duos affros ipsius
 "Abbatis, sicut ipse superius
 "queritur, et hoc paratus est
 "verificare, unde petit judicium."

No. 29.

A.D. 1343. *Thorpe*. We did not take the two beasts, but twelve to which beasts; and the avowry was entered in order that the Return might be had, [as also] where issue was taken on a traverse as to the place.

cows, as we have avowed; ready, &c.—And the other side said the contrary.—*Thorpe* prayed that his avowry might be entered so that he might be able to have the Return.—And this was done.—And between the same parties, where they were at one as to the taking of the same beasts, as to which the plaint was made upon another writ, *Thorpe* avowed in a place other than that as to which the plaint was made, and they were at issue as to the place, and the avowry was entered for the sake of the Return.

Ravish- (29.) § Ravishment of Ward in socage, for the ment of heir's aunt.—*Thorpe*. We tell you that William de Ward for a guardian in socage, against whom it was shown that there was another friend who was nearer, by whose lease the defendant held, and

Braunston, the infant's uncle, who is a nearer friend than she who is aunt, was seised of this wardship, and leased it to us for the benefit of the infant; and we demand judgment whether a writ lies against us who have the estate of him who was the nearer friend.—*Pole*. That amounts to saying that you did not ravish the ward; besides, you cannot plead the right of another person, and particularly against us whom you do not deny to have been in possession, in which case

No..29.

Thorpe. Nous ne preioms³ pas³ les ij⁴ affres, mes A.D. 1343.
 xij vaches come nous avoms avowe; prest, &c.⁵—*Et* queux
alii e contra.—*Thorpe* pria qe savowere fut entre si avers; et
 qil poait aver Retourn.—*Et ita factum est.*—Et entre lavowere
 mesmes les parties, ou ils furent a un de la prise entre pur
 de mesmes les bestes, dount la plainte fut fait a aver, ou
 autre bref, *Thorpe* avowa en autre lieu qe la plainte lissu est
 ne fut fait, et sur le lieu furent a issue, et lavowere pris sur
 entre pur Retourn.⁶ travers del
 lieu.¹

(29.) ⁷ § Ravissement de Garde en⁸ sokage, pur Ravisse-
 launte leir.—*Thorpe.* Nous vous dioms qe William ment de
 Braunstone, unele lenfant, qest plus proschein amy Garde pur
 qe cele qest aunte, fut seisi de ceste garde, et la gardeyn
 lessa a nous al oeps lenfant; et dēmandoms juge- de sokage,
 ment si devers nous qavoms lestat celuy qe fut plus countre qi
 proschein amy⁹ si bref gise.—*Pole.* Taunt amounte fut mostre
 qe vous nel ravistes pas; ovesqe ceo, vous ne¹⁰ amy, de qi
 poez pleder autri dreit, et nomement vers nous, qe¹¹ lees le
 vous ne dedites pas estre¹² possessione, en quel cas le lees le

¹ The marginal note, except the word Avowere, is from 25,184 alone.

² C., preimes.

³ 25,184, qe.

⁴ ij is from C. alone.

⁵ Ralph's replication, according to the roll, was "quod ipse cepit novem vaccas, prout ipse superius advocavit, et non predictos duos affros, sicut prædictus Abbas queritur." Upon this issue was joined. Nothing appears upon the roll, in relation to this case, after the award of the *Venire*, except adjournments.

⁶ The second action, to which reference is made in the report, appears according to the roll (R^o 108, d) to have been brought by Henry Crabbe against Ralph

Daubyne, Roger de Kyngeston and Walter Baret in respect of a taking of two cows "in villa de Strete, in quodam loco qui vocatur Fordebrigge." The avowry on behalf of Ralph and the others was of a taking of three cows "in Fordebrigge in quodam loco qui vocatur Crabbeshous." It was for suit to the Hundred Court as in the previous case. Issue was joined on the place of taking as stated in the report. Nothing appears on the roll, after the *Venire*, except adjournments.

⁷ From Harl., 25,184, and C.

⁸ 25,184, de.

⁹ amy is from 25,184 alone.

¹⁰ Harl., nel.

¹¹ Harl., and 25,184, et.

¹² estre is omitted from 25,184.

No. 80.

A.D. 1343. it is not lawful for any one to oust us.—HILLARY. Then is it the fact that there is another friend nearer?—Grene. We tell you that we were seised until ousted by him, without this that he ever had anything by lease from W. de Braunston; ready, &c. And we make protestation that we do not admit that he is nearer.—HILLARY. Then you admit that another is nearer than you to the infant, and, unless you affirm right in yourself, you will not have this action any more than a writ of Right of Wardship, because in case you had right your possession would not be traversable.—Grene. He will not have this plea unless he be made assignee of the other who has the right; therefore it is sufficient to destroy the assignment, which is the ground of his answer, because if he were a stranger, and did not claim through him who has the right, it would not be an answer to this action taken on our own possession.—HILLARY. Your possession is worth nothing, unless you have right.

Continuation of the Assise between Thomas de St. Hillary and the wife of John de Chesterton.¹

(30.) § PARNING. The record purports that the plaintiff tendered the money at the place at which the tender is limited to be made by the indenture,² and also, because the party was not found there, tendered it at another place at which the party was found, and so did all that the indenture, and the condition required, and more, and this is as it were, admitted by you.—Thorpe. The tender at the place limited in the indenture would have sufficed, and that we denied, though it may be otherwise in the record.³ —PARNING. And that would have made a natural issue.—R. Thorpe. And we could not have that before the

¹ See above, Hil. No. 8, pp. 24-34. defendant pleaded that the plaintiff

² This is not a strictly correct statement of what is in the record. did not allege any tender at Grantham (the place mentioned in the indenture), though he did

³ According to the record the allege a tender at Redmile.

No. 80.

list a nully de nous ouster.—HILL. Donques est il A.D. 1343.
issint qil y ad autre plus proschein?—Grene. Nous pleintif
vous dioms qe nous fumes seisi tange ouste par luy, voet aver
sanz ceo qil avoit unques rien du lees W. de B.; issu, et
prest, &c. Et fesoms protestacion qe nous ne conis- *per opini-*
soms pas qil est plus proschein.—HILL. Donques *onem non*
conissez³ qe autre est² plus proschein qe vous a la privete.¹
lenfant, et si⁴ vous nafferms dreit en vous, vous
naverez pas ceste accion plus qe bref de Droit de
Garde, qar en cas qe vous ussez dreit vostre pos-
session ne serra pas traversable.—Grene. Il navera
pas cel plee, sil ne soit fait assigne de lautre qe
droit en ad; donques a destruire lassignement, qest
cause de soun respouns, suffit, qar sil fut estraunge,
et ne clama pas par celui qe droit en ad, ceo ne
serra pas respouns a cest accion pris de nostre
possession demene.—HILL. Vostre possession ne vaut
rien, si vous neiez⁵ dreit.

(30.)⁶ § PARN. Le recorde voet qe le pleintif *Residuum*
tendist les deners au lieu ou le tendre est limite *de lassise*
par lendenture, et auxi, pur ceo qil ne fut pas trove *entre T.⁷*
la,⁹ en autre lieu, ou partie fut trove, il tendist, et *de Seint*
issint fist il ceo qe lendenture et la condicion voleint, *Hillare*
et plus,¹⁰ et ceste chose est come¹¹ conu¹² de vous. *et la*
—Thorpe. Le tendre au lieu limite en lendenture *femme*
ust suffi, et cella dedeimes,¹³ coment qe le recorde *Johan de*
soit autre.—PARN. Et ceo ust fait naturel issu.—R.¹⁴ *Chester-*
Thorpe. Et nous nel pooms pas aver devant les *tone.⁸*

¹ The marginal note subsequent to the word Garde is from 25,184 alone.

² C., cognuses.

³ 25,184, altres qest, instead of qe autre est.

⁴ si is omitted from 25,184.

⁵ Harl., navetz.

⁶ From Harl., 25,184, and C.

⁷ MS., J.

⁸ The marginal note subsequent to the word lassise is from 25,184 alone.

⁹ la is from Harl. alone.

¹⁰ The words et plus are from Harl. alone.

¹¹ come is omitted from Harl.

¹² C., cognu.

¹³ Harl., dedioms.

¹⁴ R. is from C. alone.

No. 31.

A.D. 1343. Justices of Assise, without answering as to the tender at the place at which the party was found.—And note that the record could not be amended by the Justices of Assise, after the adjournment into the Bench.—*Pole*. We remit the damages, and pray seisin of the land for the plaintiff.—*Thorpe*. Certainly not, you would have only the assise at large, even if the Court decided against us.—*SHARDELOWE*. Where have you seen, after a party has pleaded in bar, and abode judgment afterwards upon another matter out of point of assise, that the assise has been awarded at large?—*Thorpe*. How are you apprised of the plaintiff's seisin?—*Pole*. We have destroyed your bar; and we said further that after the tender, &c., we entered, and were seised until disseised by you.—*STONORE*, to the tenant. Will you have the money?—*Pulteney*. We take your records to witness that we did not refuse it.—*Grene*. They did refuse it on a previous occasion; and, moreover, she who is tenant is a stranger to the condition, who possibly ought not by law to have the money.—*STONORE*. You have tendered it to her, and it is right that she against whom you would recover should have the money.—*Pulteney*. Still one does not know whether the full sum is there.—*STONORE* appointed certain persons to count the money, and the woman accepted it.—And *HILLARY* awarded seisin of the land to the plaintiff.—*Quere* touching this judgment.

Rescous of (31.) § Rescous, in a certain place which is called

No. 31.

Justices saunz respoudre al tendre au lieu ou il A.D. 1343. fut trove.—Et *nota* qe le recorde ne poet pas estre amende par les Justices assignes apres ceo qil est ajourne en Baunk.—*Pole*. Nous releessoms les damages, et prioms seisine de terre pur le pleintif.—*Thorpe*. Nanil certes, vous naverez forsqe assise a large, mesqe¹ Court ajugeast countre nous.²—*SCHARD*. Ou avez vewe, apres ceo qe partie avoit plede en barre, et demure³ apres en jugement sur autre chose hors de point dassise, qomme ad agarde assise a large?—*Thorpe*. Coment estes⁴ vous appris de la seisine le pleintif?—*Pole*. Nous avoms destruit vostre barre; et deimes outre qapres le tendre, &c., nous entrames, et seisi fumes tange par vous disseisi.—*STON.*, al tenant. Voletz aver les deners?—*Pult*. Nous pernoims voz recordes qe nous les refusoms pas.⁵—*Grene*. Ils les ount refuse avant ces heures; et auxi a la condicion ele qest tenant est estraunge, qe de ley par cas ne deit pas aver les deners.—*STON*. Vous les avez tendu a lui, et il est resoun qe cele vers qi vous voletz recoverir qele eit les deners.—*Pult*. Unqore homme ne seit⁶ sil eit illoeqes tel summe.⁷—*STON*. assigna certainz gentz de noumbrer les deners, et la femme les resceut.—Et *HILL*. agarda al pleintif seisine de terre.—*Quere de judicio*.⁸

(31.)⁹ § Rescous, en certain lieu qest appelle Rescous de

¹ 25,184, mes.

² Harl., vous.

³ C., demurt.

⁴ 25,184, esteez.

⁵ pas is from C. alone.

⁶ Harl., sciet; C., sete.

⁷ 25,184, and C., seisine.

⁸ For the precise terms of the judgment see above, p. 29, note 6.

⁹ From Harl., 25,184, and C. It would seem that Huntingdon is substituted for Braundeston in the

report, possibly because "le Heystrate" in Huntingdon is mentioned in the Replevin No. 44 below, and the two cases have been confounded. According to the *Placita de Banco*, Trin. 17 Edw. III. R^o 234, an action of Rescous was brought by John Haclut against John de Braundeston, and Hugh his brother, and "Robert Jonesservant de Braundestone." The declaration was

No. 31.

A.D. 1343. the High Street in the town of Huntingdon,¹ of two
 a distress horses harnessed in a cart, as within the plaintiff's
 made for fee, taken for services in arrear.—*Seton*. The place
 services in arrear, and the defendant said that the dis-
 tress was made in the high-
 way, and out of the plaintiff's
 fee. And he was put to justify
 the rescous, because the dis-
 tress was taken in the high-
 way, or to traverse the fee,
 because a highway might be
 within the party's
 fee. within the plaintiff's
 fee, taken for services in arrear.—*Seton*. The place
 of taking is the Highway, which is out of your fee;
 and you would have taken the horses, and we would
 not suffer it; judgment whether tort, &c.—*Grene*.
 Within our fee; ready, &c.—*Seton*. The taking was
 effected in the Highway, and so out of your fee;
 ready, &c.—*Grene*. That issue is double: one that
 the taking was effected in the Highway so as to abide
 judgment in law whether the Highway can be within
 our fee: the other that the place is out of our fee,
 which falls under the head of fact.—*HILLARY* to *Seton*.
 Do you think that a highway cannot be within his
 fee? Certainly it can: for if I enfeoffed you of a
 manor to hold of me, through which manor there is
 a road, and a highway, I should distrain in that high-
 way for my services, if it were not forbidden by the
 Statute,² so that I can have a fee there.—To this
STONORE and *SHARDELOWE* agreed.—And if you were to
 take justification of the rescous on the ground that he
 distrained in the highway contrary to the Statute,²

¹ As to the place, see p. 573,
 note 9.

² 52 Hen. III. (Marlb., c. 15.)

No. 31.

Haut² Estrete,³ en la ville de Huntingdone, de deux A.D. 1343.
chivals jointz en un⁴ charet, come deiuz son fee, destresse
pris pur services arrere.—*Setone*. Le lieu, &c., est fait pur
la Haut Estrete quel est hors de vostre fee; et services
vous les⁵ voillezt aver pris, et nous ne soeffroms arere, qe
pas; jugement si tort, &c.⁶—*Grene*. Deinz nostre dit qe la
fee; prest, &c.—*Setone*. La prise fut fait en la destresse
Haut Estrete, [et issint hors de vostre fee; prest, fut fait en
&c.—*Grene*. Ceste issue est double: un qe la prise hors del
se fist en la Haut Estrete]⁷ a demurer en ley⁸ si pleintif.
la Haut Estrete purra estre deinz nostre fee: autre Et fut mys
qe le lieu est hors de nostre fee, qe chiet en fait. de justifier
—*HILL*. a *Setone*. Quidez vous qe Haut Estrete ne la rescous,
poet estre deinz son fee? Certes si poet: qar si pur ceo qe
jeo vous feffe dun maner a tenir de moy, par my pris en la
quel maner il y ad chimyn, et Haut Estrete, jeo haut
destreindra en cele Estrete pur mes services, si ceo⁹ estre
ne fust¹⁰ defendu par lestatut, issint qe fee averay¹¹ purreit
illoeges.—*Ad quod STON. et SCHARD. concordaverunt.* estre deinz
—Et si vous preissetz justificacion de la rescous par son fee.¹
ceo qil destreigna en la Haut Estrete coudre lestatut, [Fitz.,
14.]

that whereas the plaintiff "in
" feodo suo apud Braundestone
" [Rutland] pro consuetudinibus
" et servitiis sibi debitis [per
" Ricardum Brightgene servien-
" tum, suum] duos equos capi
" fecisset, et idem Ricardus illos
" ibidem imparcare
" voluisset," the defendants with
force and arms rescued them.

¹ The marginal note, except the
word Rescous, is from 25,184
alone.

² 25,184, haunt.

³ Harl., Estres; C., Estre.

⁴ 25,184, son.

⁵ The words vous les are omitted
from C.

⁶ The plea was, according to the

roll, "ubi prædictus Johannes
" Haclut supponit prædictam
" captionem fecisse apud Braunde-
" stone in feodo suo per prædic-
" tum Ricardum servientem suum,
" &c., dicunt quod idem Johannes
" Haclut cepit equos prædictos in
" regia strata, quæ est extra
" feodum suum, per quod iidem
" Johannes de Braundestone,
" Hugo, et Robertus illos rescusser-
" unt, sicut eis bene licuit," &c.

⁷ The words between brackets
are omitted from 25,184.

⁸ Harl., la qe.

⁹ 25,184, jeo.

¹⁰ 25,184, fu.

¹¹ Harl., y avera.

Nos. 32, 33.

A.D. 1343. that would be one thing; but when you go further, and traverse his fee, we shall take that traverse for issue as to the whole.—And they were at issue on the fee, without anything as to the highway being entered.

Audita Querela on statute merchant for the heir of the recognisor, who had a *Supersedeas*, but a purchaser would not have it. Note well as to *Audita Querela*. (32.) § An *Audita Querela* was sued by the heir of the party on a statute merchant; and he prayed thereupon a *Venire facias* and a *Supersedeas* of execution. And he had them. But the Court said that, if he had been a stranger who had purchased, he would not have had them, because the suit [by *Audita Querela*] is not given to a stranger who is purchaser before he has been ousted by execution, but for party or heir of party the suit is given as soon as ever suit on the statute merchant commences.

Entry. (33.) § A writ was brought against two persons. One disclaimed; the other took upon himself the tenancy, and vouched the one who was named in the writ, and had disclaimed, to warrant.—*Blaykeston*. He ought not to be admitted to this voucher: for we tell you that neither he who is vouched nor any of his ancestors ever had anything except by joint purchase which the

Nos. 92, 93.

ceo serreit asqune chose; mes quant vous alez outre, A.D. 1343
et traversez son fee, cel travers prendroms pur issue
a tout.—Et sur le fee sont¹ a issue, sanz ceo qe
rien del Haut Estrete fut entre.²

(92.)³ § *Audita Querela* fut suy par heir⁵ de *Audita*
partie sur estatut marchaunt; et il pria sur ceo⁶ *Querela*
Venire facias et *Supersedeas* del execucion. *Et habuit.* *mar-*
Mes⁷ sil ust este estraunge purchaceour COURT luy *chaunt,*
dit qil nel ust pas eu, pur ceo qe la suyte nest *pur leir le*
done a estraunge purchaceour avant qil soit ouste *reconi-*
par execucion, mes pur partie ou heir de partie la *sour,*
suyte est done a plus toust qe la suyte sur lestatut *gavoit*
comence. *Supersedeas,* mes purchace-
our nel avera pas.⁴
Nota bene
de Audita
*Querela.*⁸
[Fitz.,
Audita
Querela,
8.]

(93.)⁹ § Bref fut porte vers deux. Lun desclama; Entre.¹⁰
lautre emprist la tenaunce, et voucha a garantir [Fitz.,
lautre nome el bref gavoit desclame.¹¹—*Blaike.* A ceo *Counter-*
voucher ne deit il estre resceu: qar nous vous dioms *ple de*
qe celuy qest vouche, ne nul de ses auncestres navoint *Voucher,*
unqes rien forsqe de joint purchace qe launcestre le¹² 40.]

¹ C., seount.

² The replication was, according to the roll, "quod ipse cepit equos "prædictos apud Braundestone "infra feodum suum sicut ipse "superius queritur," and issue was joined upon this. The High Street was thus not mentioned in the replication, though it was in the plea. Nothing further appears on the roll, except the award of the *Venire*.

³ From Harl., 25,184, and C. The report is repeated in 25,184, after No. 93.

⁴ This marginal note subsequent to the word *Querela* is from 25,184 alone.

⁵ C., bref.

⁶ C., le.

⁷ Mes is from Harl. alone.

⁸ This marginal note is from Harl. alone.

⁹ From Harl., 25,184, and C.

¹⁰ So in Harl. The marginal note in 25,184 is *Præcipe quod reddat* There is none in C.

¹¹ desclame is from Harl. alone.

¹² 25,184, et lautre ne, instead of qe launcestre le.

Nos. 84, 85.

A.D. 1348. vouchee's ancestor and he against whom the writ is brought made in common to them and their heirs; judgment whether on the ground of the possession which these had in common they can maintain the voucher.—HILLARY. This counterplea is not given either by Statute or by common law; therefore let the voucher stand.

Entry against a Prior in the *per*, and the Prior alleged that he found his church seised, so that the writ ought to be in the *post*; and the demandant was put to answer as to this, notwithstanding that the entry supposed by his writ might be good. (34.) § Entry against a Prior in the words "into which he has not entry but by B., to whom the demandant's ancestor leased for a term which is passed, &c."—*Pole*. We tell you that the Prior found his church seised, so that the writ ought to be in the *post*.—*Thorpe*. That is not a plea, if you do not traverse the entry supposed by my writ.—HILLARY, *ad idem*. It may be that you found your church seised, and that afterwards the demandant's ancestor came into seisin, and leased, and that you did enter as the writ supposes.—*Pulteney*. If a writ be brought against a man and his wife supposing that they have not entry but by such an one, and the husband say that he found his wife seised, that suffices for the abatement of the writ, and yet it may by possibility be that through a subsequent change of estate the writ is good, but that must be pleaded; so also in this case.—To this no answer was given.—HILLARY. You do not answer to his writ.—*Pole*. The Prior found his church seised, without this that he entered as the writ supposes; ready, &c.—And the other side said the contrary.

Entry, where aid was granted, out of the degrees, and of a person in remainder in fee tail. (35.) § A writ was brought against one who showed that the land was leased to A., for his life, against whom the writ was brought, and that the reversion afterwards was granted to two persons and their heirs, and that attornment was made to them, and that between them and B. a fine was levied, by which they granted the reversion to B. for his life, the remainder

Nos. 34, 35.

vouche et celui vers qi le bref est porte firent en A.D. 1343. comune a eux et lour heirs; jugement si. pur la possession qils avoint en comune puissent¹ le voucher maintenir.—HILL. Ceo countreplee nest done par estatut ne par comune ley; par quei estoise le voucher.

(34.)² § Entre vers Priour, en le quel il nad Entre vers le Priour en le *per*, qe alleggea qil trova sa eglise seisi, issint le bref serreit en le *post*.—*Thorpe*. Ceo nest pas plee, si vous ne traversez lentre suppose par mon bref.—HILL., *ad idem*. Poet estre qe vous trovastes vostre eglise seisi, et puis⁴ launcestre le demandant avient, et lessa, et qe vous estes⁵ entre come le bref suppose.—*Pult*. Si bref soit porte vers un homme et sa femme supposaut qils nount entre si noun par un tiel, et le baron die qil trova sa femme seisi, ceo suffit al abatement du bref, et uncore poet estre par possibilite,⁶ par chaunge destat puis, qe le bref est bon, mes ceo covient estre plede; auxi icy.—*Ad quod non est responsum*.—HILL. Vous ne responez pas a son bref.—*Pole*.⁷ Il trova sa eglise seisi, sans ceo qil entra come le bref suppose; prest, &c.—*Et alii e contra*.

(35.)⁸ § Bref fut porte vers un qe moustra qe la terre fut lesse a A., pur sa vie, vers qi le bref est porte, et puis la reversion graunte a deux et a lour heirs, et attournement fut fait a eux, entre queux et un B. fyn se leva, par quel ils graunterent la reversion a B. pur sa vie, le remeindre a C. et

Entre, ou eide est grante, hors degree, et de cely en remeindre de fee taillee

¹ Harl., puissetz.

² From Harl., 25,184, and C.

³ The marginal note subsequent to the word *Entre* is from 25,184 alone.

⁴ The words *et puis* are omitted from 25,184.

⁵ 25,184, *esteez*.

⁶ 25,184, *possiblete*.

⁷ MSS., HILL.

⁸ From Harl., 25,184, and C.

No. 36.

A.D. 1343. to C. and D. his wife, and the heirs of their two bodies, and if they died without heir, &c., the remainder to the right heirs of C. And we tell you that B. is dead, and D. the wife of C. is dead without issue between her husband and her, and so all the right rests in C., and we pray aid of him.—*Derworthy*. You show that he of whom you pray aid has nothing except by remainder in fee tail, and yet, because possibility of issue is extinct, he has in effect only a term for life, and may possibly never have anything more; besides, he is out of the degrees, and so that goes to the abatement of the writ; judgment.—*HILLARY*. On the matter shown all the right is in him; and that which you cannot do by your writ the Court can do; wherefore let the tenant have the aid.

Formedon in respect of a manor. Non-tenure was alleged, against which the demandant maintained his writ, because the tenant had, as tenant of the entirety, sued against him by a voucher, and, this notwithstanding, the writ abated on his non-denial.

(36.) § A manor was demanded.—*Thorpe*. We cannot render his demand, because one A. holds so much, &c.—*Moubray*. You ought not to be admitted to that now, because one A. brought her writ of Dower against you, and demanded a third part of the same manor, on which writ, after view, you vouched us to warrant, and a *Summoneas ad warrantizandum* is pending between us, on which we are to warrant as regards you; judgment, since you have allowed that you are tenant of the entirety, whether you shall be admitted to allege non-tenure.—*Pole*. You are not a party to that suit; besides, even if it were allowed in the manner you allege, that

No. 36.

D. sa femme, et les heirs de lour deux² corps, et A.D. 1343.
 sils deviassent saunz heir, &c., le remeindre as dreitz ^{apres}
 heirs C. Et vous dioms qe B. est mort, et D. la³ ^{possiblete}
 femme C. saunz issue entre son baroun et luy est ^{dissu}
 mort, et issint tout le dreit repose en C., et prioms ^{esteinte,}
 eide de luy.—*Derworthi*. Vous moustrez qe celui de ^{pur ceo qe}
 qi vous priez eide nad forsqe par⁴ remeindre en fee ^{le dreit fut}
 taille, et uncore, pur ceo qe possiblete⁵ dissue est ^{taille en}
 esteint, en effect il nad qe terme de vie qe⁶ par ^{ces [ses]}
 cas jammes rien avera; ovesqe ceo, il est hors des ^{dreitz}
 degres,⁷ issint al abatement du bref; jugement.—
 HILL. Sur la matere moustre tout le dreit⁸ est en
 luy; et ceo qe vous ne poietz faire par⁹ vostre bref
 COURT poet¹⁰; par quei eit leide.

(36.)¹¹ § Un maner fut demande.—*Thorpe*. Nous ^{Forme-}
 ne poms sa demande rendre, qar un A. tient tant,¹² ^{doun dun}
 &c.—*Moubray*. A cel ore¹⁴ ne devez estre resceu, ^{maner.}
 qar un A. porta son bref de Dower vers¹⁵ vous, et ^{Noun-}
 demanda la tierce partie de mesme le maner, a ^{tenue}
 quel bref, ^{allegge,}
 apres la vewe,¹⁶ vous nous¹⁷ vouchastes a ^{contre qi}
 garrantir, et *Summoneas ad warrantizandum* pent ^{le de-}
 entre nous,¹⁸ a quel nous sumes vers vous a gar- ^{mandant}
 rantir; jugement, del houre qe vous avez accepte qe ^{meyntynt}
 vous estes tenant de lentier, si dallegger nountenue ^{son bref,}
 serrez resceu.—*Pole*. Vous nestes pas partie a cele ^{pur ceo qe}
 suyte; ovesqe ceo, tout fut ceo accepte par la manere ^{le tenant}
^{ad suy par}
^{voucher}
^{vers ly,}
^{com}
^{tenant del}
^{entier, et}
^{non}
^{obstante,}
^{sour soun}
^{nient}
^{dedire,}
^{bref}
^{abatist.¹²}

¹ The marginal note, except the word Entre, is from 25,184 alone.

² deux is from Harl. alone.

³ C., sa.

⁴ Harl., de.

⁵ 25,184, possiblete.

⁶ qe is from Harl. alone.

⁷ Harl., de gre; 25,184, des grees, instead of des degres.

⁸ 25,184, bref.

⁹ 25,184, pur.

¹⁰ poet is omitted from Harl.

¹¹ From Harl., 25,184, and C.

¹² The marginal note except the word Formedoun, is from 25,184 alone.

¹³ C., tenent; the word is omitted from Harl.

¹⁴ ore is from Harl. alone.

¹⁵ Harl., devere.

¹⁶ The words apres la vewe are omitted from Harl.

¹⁷ nous is omitted from Harl.

¹⁸ Harl., fut entre, instead of pent entre nous.

Nos. 87, 88.

A.D. 1343. might be, because on this Formedon you are demanding on the supposition that your ancestor was possibly seised in accordance with the form of gift, and if I do not hold in that manner that will abate the writ by non-tenure. And on the writ of Dower it was necessary to answer in accordance with the way in which the husband was seised of the manor; and therefore the two may stand together.—*Moubray*. Judgment whether you shall be admitted.—*HILLARY*. Since you do not deny the non-tenure, take nothing by your writ.—And the point was touched by some that, on a writ of Dower, where a third part of a manor is demanded, non-tenure abates the writ, although the non-tenure be alleged only as to parcel.—But this was denied by the Court.

Exigent.
Note that
in London
an *Alias*
Exigi
facias with
allowance
of the
previous
Hustings
was
prayed.

(87.) § Note that an *Exigi facias* issued to the Sheriffs of London, who returned that, since the writ which came to them there, there had been only four Hustings.—*Richemunde*. We pray an *Exigi facias, allocatis Hustenges*, because it was not our default that we took so short a time, as their Court of Hustings is held at uncertain intervals.—*HILLARY*. You shall not have it. Sue a new Exigent.

Venire
facias to
account,
prayed
against
tenant by
statute
merchant,
where the
plaintiff
was ready
to make

(88.) § *Richemunde* showed that one had the estate of a tenant by statute merchant, and had levied a great part of the debt, and received part in money, and (said he) "See here the acquittance, and the recognisor is ready to make satisfaction as to the rest," and he showed the money, and prayed a *Venire facias* to account against the person having the estate.—*SHARDELOWE*. According to what law? The Statute¹ purports that the obligee shall hold the lands until he has levied his debt, costs, and charges, so that he

¹ 13 Edw. I., St. 3 (*De Mercatoribus*).

Nos. 87, 88.

ge vous allegges, ceo purreit estre, qar a ceo Fourme- A.D. 1343.
doun vous demandes¹ solonc ceo qe par cas vostre
auncestre fut seisi par la fourme, et, si jeo ne teigne
pas par la manere, ceo abatera le bref par noun-
tenue. Et al bref de Dower covenoit aver respondu
solonc ceo qe le baron fut seisi del maner; par
quei les deux pount esteer² ensemble.—*Moubray*.
Jugement si vous serrez resceu.—*HILL*. Puis qe vous
ne deditez pas la nountenue, preignez rien par vostre
bref.—Et fut touche par asquns qe nountenue en
bref de Dower, ou tierce partie du maner est de-
mande, abate le bref, coment qele soit allegge forsqe
de parcelle.—*Quod fuit dedictum per CURIAM*.

(87.)³ § *Nota quod Exigi facias* issit a Vicountes *Exigende.*
de Loundres, qe retournerent qe, puis le bref qe *Nota quod*
lour vint cy,⁵ ny avoient qe iiij Hustenges.—*Richem.* *Exigi*
Nous prioms *Exigi facias, allocatis Hustenges*, qar ceo *facias en*
ne fut pas nostre defaut qe nous priames si court *Londres*
jour, qar lour⁶ Hustenges est tenu en nouncertein.— *fut prie*
sicut alias,
allocatis
Hus-
*tenges.*⁴
HILL. Vous nel averez pas. Sues novel *Exigende.*
[Fitz.,
Exigent,
11.]

(88.)⁷ § *Richemunde* moustra⁸ qun avoit lestat le *Venire*
tenant par statut marchaunt, et avoit leve graunt *facias prie*
partie, &c., et partie ad resceu en deners, et veez *vers*
cy acquitaunce, et del remenant le reconisour⁹ est *tenaunt*
prest de faire gree, et moustra les deners, et pria *par statut*
mar-
Venire facias vers luy dacompter.—*SCHARD*. Par quel *chaunt*
ley? Statut voet¹⁰ qil teigne les terres tanqil eit *dacom-*
leve sa dette, mises, et coustages, issint qil ne poet *ter, la ou*
le pleintif
est prest
de faire

¹ Harl., demanderetz.² Harl., estere.³ From Harl., 25,184, and C.⁴ The marginal note is from 25,184 alone. In Harl. the note is *Nota*; in C. there is none.⁵ Harl., y.⁶ Harl., a lour; 25,184, allegge.⁷ From Harl., 25,184, and C.⁸ C., counta.⁹ C., conisour.¹⁰ voet is omitted from C.

No. 39.

A.D. 1343. cannot be compelled to receive them in Court, when execution is made, and therefore you are labouring in vain; but it would be otherwise if the application were made upon an ordinary recognisance.

Mesne for a tenant in service, and the count was in general terms, and exception was taken to it because their writ lies only after he is distrained, and that on process sued against him, and this matter ought to be shown by count. The exception was not allowed.

(39.) § Mesne.—*Grene*. We tell you that he who brings the writ has nothing in the demesne, but is tenant in service in fee simple; and he has counted that he is distrained by oxen of his plough, so that he cannot till his land; judgment of the count, because although such a writ may lie for the mesne on special matter when a writ of Mesne is brought against him, yet he must count in accordance with his case.—*SHARDELOWE*. Many matters are counted by way of form which are not traversable, as in *Warrantia Chartæ* in which the words of the writ are "*unde chartam suam habet*," and so the party must count, and even though warranty have to be deraigned by reason of an alleged release, still the form of the count shall not be changed.—*Thorpe*. Suppose that in a *Warrantia Chartæ* the case resembles our matter, that is to say that tenant by his warranty brings the writ, as he can have it, and he counts in general terms, and not according to his particular case, the count will abate. So in the matter before us.—*HILLARY*. In such a case he

No. 39.

estre² arce de les resceyver en Court, quant lexecu- A.D. 1343.
cion est fait, et pur ceo vous travaillez en veyne; [gree].
mes autre serreit sil fut hors de reconisaunce.³ Et nega-
tur.¹

[Fitz.,
Sugges-
tion, 16.]

(39.)⁴ § Mene.⁶—*Grene*. Nous vous dioms qe celuy Mene pur
qe porte le bref nad rien en le demene, mes est tenant en
tenant en service en fee simple; et il ad counte⁷ la cont fut
qil est destreint par boefs de sa carue,⁸ qil ne poet general, et
sa terre gaygner; jugement du count, qar mesqe tiel cest chal-
bref ygise pur⁹ le mene sur matere especial quant enge pur
bref de Mene⁶ est porte vers luy, uncore il covient bref ne
counter solonc son cas.—SCHARD. Moltz¹⁰ des choses apres ceo
sount countes par¹¹ fourme qe ne sount pas travers- qil est des-
able, come en Garrantie de Chartre, qe voet unde treint, et
chartam suam habet, et issint covient counter, tout ceo par
soit¹² garrantie a derener par relees, uncore la quele
fourme de count ne serra pas chaunge.—*Thorpe*. chose
Mettez en Garrantie de Chartre¹³ le cas semblable serreit
a nostre matere, saver, qe tenant par sa garrantie moustre
porte le bref, come il le poet aver, et il counte par count.
generalment, et noun pas solonc son cas, le count *Non allo-*
abaterra. *Sic in proposito*.—HILL. En tiel cas il catur.⁵
[Fitz.,
Mesne,
34.]

¹ The marginal note is from 25,184 alone.

² estre is omitted from 25,184.

³ C., recognisaunce.

⁴ From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Trin. 17 Edw. III, R^o 130. It there appears that the action was brought by John Deneys against Nicholas de Wanford, in respect of services demanded by Walter Fitz-William for the manor of Alphington (Devon), for which services the plaintiff was distrained in the said manor, as

alleged in his declaration "per
" averia carucarum suarum, ita,
" &c., pro defectu acquietantie
" ipsius Nicholai."

⁵ The marginal note, except the word Mene, is from 25,184 alone.

⁶ C., Meen.

⁷ Harl., conu.

⁸ 25,184, charue.

⁹ Harl., sur.

¹⁰ Harl., Mold; 25,184, Ment.

¹¹ Harl., pur.

¹² 25,184, son.

¹³ The words de Chartre are omitted from Harl.

No. 39.

A.D. 1843. will have neither writ nor count.—SHARDELOWE, *ad*
 Note that *idem.* It has always been held for law that no one
 tenant by shall have *Warrantia Chartæ* but tenant in demesne;
 his warranty but go on now to our present matter, and, even though
 shall not a common count be maintained, your answer is saved
 have to you; and you know well that he can have only a
Warrantia common writ.—*Thorpe.* If there be two or three
Chartæ. mesnes, the law gives to each of them, on special
 matter a writ of Mesne against the other; but to a
 mesne who is tenant in service the suit is not given
 before he is impleaded by his tenant; and therefore
 that which is the ground of his action must be shown
 in counting the count.—STONORE. To this writ and
 count you can have your answer that he is not dis-
 trained through your default, or that of his own act
 he has attorned to the chief lord.—*Grene.* He is not
 distrained within the fee; ready, &c.—SHARDELOWE.
 Then will you say that you are bound to the acquit-
 tal of services, but, in order to escape from damages,
 that he is not distrained through your default? for you
 shall not have an issue as to whether distrained within
 the fee or not.—*Thorpe.* And if he be not distrained
 within the fee, he shall not be answered on such a
 count, because I have nothing to do with a distress
 made out of the fee, unless it were on some special
 fact which is not counted.—STONORE. The general
 issue will serve your purpose; and if you have per-
 formed what you ought towards your lord, he will
 never charge you with damages.—*Grene.* Then it would
 follow that, if he counted that he was distrained for a
 relief due from me, that would make an issue—not
 distrained for a relief due from me. The conclusion
 is false: for if he be charged in relation to the tenant
 in demesne, he will, by writ of Mesne, because a lord

No. 39.

navera ne bref ne counte.¹—SCHARD., *ad idem.* A.D. 1843.
 Homme lad tenu pur tout temps ley qe nul homme *Nota qe*
 navera Garrantie de Chartre forsqe tenaunt en de- *tenant par*
 mene; mes alez ore a nostre matere, et, mesqe *sa gar-*
 comune count soit meintenu, vostre respouns vous *rantie*
 est salve; et vous savez bien qil navera forsqe comune *navera pas*
 bref.—*Thorpe.* Si deux menes² ou iij y soient, ley *Garrantie*
 doune sur matere especial a chescun vers autre bref *de*
 de Mene; mes a mene⁴ qest tenant en service nest *Chartre.³*
 pas la suyte done avant qil soit emplede par son *[Fitz.,*
 tenant; par quei cella, en count countant,⁵ covendreit *Garraunt*
 estre moustre qest cause de saccion.—*Ston.* Vous *de*
 poiez a ceo bref et count aver vostre respouns qil *Chartres,*
 nest pas destreint par vostre default, ou qe de son *21.]*
 fait demene il est attourne a chef seignur.—*Grene.*
 Il nest pas destreint deinz le fee; prest, &c.—SCHARD. *[Fitz.,*
 Voillez dire donques qe vous estes⁶ tenuz al acquit- *Issue, 32.]*
 aunce mes pur estourtre⁷ de damages qe nient
 destreint [par vostre default? qar vous naverez pas
 issue le quel destreint deinz le fee ou noun.—*Thorpe.*
 Et sil soit pas destreint]⁸ deinz le fee, sur tiel
 count il ne serra pas respondu, qar a destresse fait
 hors del fee jeo nay qe faire, sil ne fut sur especial
 fait qe nest pas counte.—*Ston.* Le general issu vous
 servira; et si vous eiez fait a vostre seignur quei
 faire deviez jammes ne vous chargera il des damages.
 —*Grene.* Donques ensuereit qe sil countast⁹ qil fut
 destreint pur mon releef¹⁰ qe ceo freit issue qe nient
 destreint pur moun releef.¹⁰ *Consequens falsum:* qar
 sil soit charge vers le tenant en demene par bref
 de Mene, pur ceo qun seignur paramount fait

¹ 25,184, compte.² The marginal note is from 25,184 alone.³ Harl., *nomes en certeyn*, instead of *menes*.⁴ The words *mes a mene* are omitted from C.⁵ Harl., *continuaunt*.⁶ 25,184, *esteez*.⁷ 25,184, *estourtir*.⁸ The words between brackets are omitted from C.⁹ C., *conissat*.¹⁰ C., *relief*.

No. 39.

A.D. 1348. paramount makes distress, have acquittal of services against me on the special matter, whether I have performed my services or not, and I shall have my suit over since I am aggrieved by suit made against me.—STONORE. It suffices for you that you have done that which you ought to have done.—Afterwards the issue was taken: Not distrained through his default; and upon that they were at a traverse.—And, notwithstanding that judgment on the principal matter was strongly counterpleaded, SHARDELOWE adjudged that the plaintiff should recover the acquittal of services on the acknowledgment of liability to acquit which determined the plea as to the right.

Judgment
given on
the
liability to
acquit of
services,
where
there had
been taken
the issue:
Not dis-
trained
through
his de-
fault.

No. 89.

destresse, il avera¹ acquitaunce vers moy sur la A.D. 1343.
 matere especial, le quel jay fait mes services ou
 noun, et jeo averay² ma suyte outre quel hour qe
 jeo soy greve par suyte fait vers moy.—STON. Il
 suffit pur vous³ qe vous eiez fait ceo qe vous
 duisiez faire.—Puis⁴ lissue est pris qe nient destreint
 par sa default; et sur ceo sount a travers.—Et *non*
obstante qe⁵ le jugement sur le principal fut fore-
 ment⁶ countreplede, SCHARD. agarda⁷ qe le pleintif
 recovereit lacquitaunce sur la conissaunce de lacquit-
 aunce qe termina le plee en droit.⁹

Judicium
 sur lac-
 quitaunce
 ou lissu
 est pris qe
 nient des-
 treint par
 sa de-
 faute.⁹

¹ 25,184, navera.

² Harl., ja avera; C., javera,
 instead of jeo averay.

³ vous is omitted from 25,184.

⁴ 25,184, Apres.

⁵ qe is omitted from Harl.

⁶ Harl., ferement.

⁷ C., ajugea.

⁸ The marginal note is from
 25,184 alone.

⁹ In Harl. are added the words
Vide plus Termino Trinitatis xix,
&c.

According to the record Nicholas
 pleaded as follows:—"Non dedit
 "quod ipse tenetur acquietare
 "prædictum Johannem versus
 "quoscunque pro prædictis ser-
 "vitiis, prout ipse superius
 "narravit, sed dicit quod idem
 "Johannes non distringitur pro
 "defectu acquietantiæ ipsius
 "Nicholai." Issue was joined
 upon this.

"Ideo consideratum est quod
 "prædictus Nicholaus de cætero
 "ipsum acquietet. Et idem
 "Nicholaus in misericordia quia
 "prius ipsum non acquietavit."

The verdict at *Nisi prius* was
 "quod quidam David Coffyn tenet
 "de prædicto Johanne Deneyis

"manerium de Alwyntone, cum
 "pertinentiis, per homagium,
 "fidelitatem, et per servitium
 "duorum feodorum militum
 "Moritonias, qui quidem Johannes
 "Deneys idem manerium tenet
 "de prædicto Nicholao per homa-
 "gium, fidelitatem, et ad scuta-
 "gium domini Regis quadraginta
 "solidorum, cum acciderit, decem
 "solidos, et ad plus plus, et ad
 "minus minus, de quibus servitiis
 "prædictus Nicholaus seisisit est
 "per manus prædicti Johannis,
 "et ipsum pro eisdem servitiis
 "acquietare debet versus quos-
 "cunque. Et dicunt quod præ-
 "dictus Nicholaus tenet manerium
 "prædictum de quodam Waltero
 "Fitz William per homagium et
 "fidelitatem, &c., et, pro eo quod
 "homagium et fidelitas prædicti
 "Nicholai, nec non decem marcas
 "de relevio prædicto Waltero
 "Fitz William a retro fuerunt,
 "cepit ipse quasdam districtiones
 "in manerio prædicto pro
 "homagio, fidelitate, et relevio
 "prædictis, per quod prædictus
 "David tenens manerii prædicti
 "tulit quoddam breve de Medio
 "versus prædictum Johannem

No. 40.

A.D. 1843. (40.) § Note that in a Court of Ancient Demesne, *Recordari* out of a Court of Ancient Demesne, in which case the plea was to be held in this Court [the Common Bench] on the same Original Writ, by reason of a disability of the former Court.

on a Little Writ of Right, the plaintiff made protestation that he was making suit in the nature of a Mert d'Ancestor. And the Assise was awarded, and there were only four suitors, of whom one was tenant and another demandant; and, by reason of the mischief that right could not be done there, a *Recordari* was granted, to remove the whole plea into the Bench, returnable now. The tenant made default, and, because the Original Writ was not sent, the Court could not record anything as to the default, but awarded the Distress against the Bailiff to have the Original Writ here.

No. 40.

(40.) ¹ § *Nota* qen Auncien Demene, sur petit bref A.D. 1343.
 de Dreit, le pleintif fist protestacion de suyre en *Recordari*
 nature de Mort dauncestre. Et ² lassise ⁴ agarde, ⁵ hors dan-
 et il ⁶ navoit qe iiij ⁷ suytours, dount un fut tenant ciene
 et un ⁸ autre demandant; et, pur le meschief qe Demene,
 dreit illoeqes ne put estre tenu, *Recordari* ⁹ fut graunte ou le ple
 de tout le plee ¹⁰ en Baunk retournable a ore. Le loriginal est a tener
 tenant fait défaut, ¹¹ et, pur ceo qe loriginal nest pas ceinz par
 maunde, Courr ne put rien recorder ¹² de la défaut, mesmes par
 mes agarda ¹³ la ¹⁴ Destresse vers ¹⁵ le baillif daver [Fitz.,
 icy loriginal. Cause de
 remover
 ple, 15.]

"Deneys, et postea per quandam
 "inquisitionem inter ipsos David
 "et Johannem inde captam com-
 "pertum fuit quod idem David
 "districtus fuit per prædictum
 "Walterum pro defectu acquie-
 "tantie prædicti Johannis, eo
 "quod idem Johannes acquietare
 "deberet prædictum David versus
 "quoscunque pro homagio, fideli-
 "tate, et pro servitio duorum
 "feodorum militum Moritonie,
 "de quibus servitiis idem Johannes
 "seisitus fuit per manus prædicti
 "David ut per manus veri tenentis
 "sui, et ipsum non acquietavit
 "versus prædictum Walterum.
 "Et damna prædicti David taxata
 "fuerunt perjuratores inquisitionis
 "illius ad vigniti et quinque
 "marcas. Et dicunt quod præ-
 "dictus Johannes Deneys nun-
 "quam habuit aliqua averia vel
 "alia bona vel catalla propria
 "in manerio prædicto per quæ
 "distringi potuit. Quæsitum est
 "a juratoribus prædictis de damnis
 "prædicti Johannis si adjudicetur
 "quod idem Johannes districtus
 "est per prædictum Walterum
 "pro defectu acquietantis præ-

"dicti Nicholai, qui assident ea,
 "si, &c., ad viginti marcas," &c.
 The record ends here.

¹ From Harl., 25,184, and C.
 The record of the case is among
 the *Placita de Banco*, Trin. 17
 Edw. III., R^o 390. As it is of a
 length out of all proportion to that
 of the report (for the explanation
 of which it is necessary) it has
 been printed in the Appendix (B).

² The marginal note subsequent
 to the word Demene is from 25,184
 alone.

³ Et is omitted from 25,184.

⁴ C., lasseisine.

⁵ C., ajuge.

⁶ C., sil.

⁷ Harl., ij; the other MSS. of
 Y.B. vj. The number iiij is from
 the record.

⁸ un is from Harl. alone.

⁹ C., *Recordare*.

¹⁰ C., poeple.

¹¹ 25,184, defaite.

¹² Harl., regarder.

¹³ C., ajugea.

¹⁴ la is from Harl. alone.

¹⁵ In C. the case ends here. The
 words Le baillif, &c., are made the
 beginning of the next case.

Nos. 41, 42.

A.D. 1343.

Dower in one vill in respect of a third part of one manor. Exception was taken to the writ inasmuch as the manor extends into two villis.

(41.) § Dower. The writ was brought for dower in one vill, and the demand was for a third part of a manor.—*Seton*. We tell you that the manor, &c., extends into two villis; judgment of the writ, because one of the villis is not mentioned in the writ.—*Thorpe*. How much extends into that other vill which is not mentioned in the writ, for unless that is told your answer is not complete, because you will have to give us a good demand in the vill mentioned in the writ by excepting the parcel which extends into the other vill.—*Seton*. I have given you a good writ in the two villis, but I shall not give you a good demand.—*Thorpe*. Yes, you will; and it might be that what is in the other vill was not parcel in the seisin of my husband, and as to that I shall have an answer, when you give me a demand with certainty. And afterwards *Thorpe* said that the manor extended completely into the vill mentioned in the writ so far as it was in the seisin of her husband.

Outlawry was pronounced against one person, and by virtue of the *Capias* another person was taken, who, on his suggestion that he was not the same person,

(42.) § A writ of Trespass was sued in Westmoreland by W. Longle against John de Riston. Process was continued until he was outlawed, wherefore a *Capias utlagatum* issued to the Sheriff of the County of Cambridge, who took John de Riston, and sent the body, which remained in the Fleet Prison.—*Grene* came, and stated the case, and prayed a garnishment for John de Riston against the person who brought the writ, to know with certainty whether the John who is taken is the same person as he against whom the plaintiff sued, and thereupon produced a writ to

Nos. 41, 42.

(41.) ¹ § Dower. Le bref fut porte en une ville, A.D. 1343. et la demande fut de la tierce partie dun maner.—*Setone*. Nous vous dioms qe le maner, &c., sestent ² tierce parties dun maner. en ij villes; jugement du bref, de ceo qe lune ville nest pas nome el bref.—*Thorpe*. Combien ³ sestent ⁴ Le bref en lautre ville qe nest pas nome el bref, ⁵ qar autrement nest pas vostre respouns plein, pur ceo qe vous durrez ⁶ bone demande en la ville nome el sestent en ij villes. ⁷ bref par forprise de la parcelle qe sestent en lautre ville.—*Setone*. Jeo vous ey done bon bref en les deux villes, mes bone demande vous durray ⁸ jeo pas.—*Thorpe*. Si ferrez ⁹; et put estre qe ceo qest en lautre ville ne fut pas parcelle en la seisine mon baroun, et a ceo averay jeo respons, quant vous durrez en certain. ¹⁰ Et puis *Thorpe* dit qe pleinement le maner sestent en la ville nome el bref solonc ¹¹ ceo qe ceo ¹² fut en la seisine son baroun.

(42.) ¹³ § Bref de Trespas par W. Longle ¹⁴ fut suy Utlagerie en Westmerlonde vers Johan de Ristone. ¹⁵ Proces pronuncie en un, continue tange il fut utlage, par quei *Capias utlagatum* issit a Vicounte de Cauntebrige, qe prist ¹⁶ et autre persone par le Johan de Ristone, et maunda le corps, qe demoert *Capias* fut en Flete.—*Grene* vient, et moustra le cas, et pria ¹⁷ pris, qe sur sa suggestion qil garnissement vers celui qe porta le bref, pur Johan de Ristone, a saver moun si Johan qest pris est ¹⁸ nest pas mesme la persone vers qi il suist, et sur ceo mist ¹⁹ persone

¹ From Harl., 25,184, and C.

² The marginal note, except the word Dower, is from 25,184 alone.

³ 25,184, coment.

⁴ C., sustent.

⁵ The words el bref are from Harl. alone.

⁶ C., dirrez.

⁷ 25,184, el autre, instead of en lautre.

⁸ C., dirrei.

⁹ Harl., fres.

¹⁰ The words en certain are omitted from C.

¹¹ The words el bref solonc are omitted from C.

¹² ceo is omitted from C.

¹³ From Harl., 25,184, and C.

¹⁴ 25,184, Lenal; C., Lengle.

¹⁵ This name is spelt in the MSS. without any uniformity, Ristone, Rystone, Ryshtone, Richstone, and Rustone.

No. 48.

A.D. 1348. the Justices directing them to do right. And in the writ were the words "*riis et modis paratus est, &c.*, *prout Curia consideraverit.*" And he said further that the John de Riston [who is taken] is not known by the name of John de Riston, and does not bear that name.—SHARDELOWE. Sue a charter of pardon.—*Pole*. In that case he will never be admitted to say that he has any other name than that which the charter supposes, which charter will necessarily be in accordance with the record.—SHARDELOWE. According to what you say the Sheriff has done you a wrong, for which you will have an action on the ground of the imprisonment.—*Pole*. Yes, that is true; but I shall never be delivered out of prison in that way.—SHARDELOWE. What could be done even if the party were here in Court?—*Pole*. One could take an averment as to whether we were known by the one name and the other, or not.—SHARDELOWE. Will you say that there is another John de Riston?—*Pole*. What can one who is of the County of Cambridge know of him who belongs to the County of Westmoreland? But in the County of Stafford there are three or four John de Ristons.

Trespass (48.) § Trespass against an Abbot and his co-monks

No. 43.

avant bref qils feissent dreit. Et le bref voleit *viis et modis paratus est, &c.*, prout Curia consideraverit. Et dit outre qe Johan de Ristone nest pas conu² par noun de³ Johan de Ristone, ne cel noun ne porte. —SCHARD. Suez chartre de pardoun.—Pole. Donques serra il jammes resceu a dire qil ad autre noun qe la chartre ne suppose, quel chartre serra acordaunt *necessario* al recorde.—SCHARD. A vostre dit le Vicounte vous ad fait tort, de quei vous avez accion pur emprisonement.⁴—Pole. Oil, cest verite; mes ne serrai⁵ jammes delivers hors de prisone par cele voie.—SCHARD. Qe freit homme mesqe la partie fut cy⁶ en Court?—Pole. Prendreit averement si nous fuissoms conu² par lun noun et lautre, ou noun.—SCHARD. Voillez dire qil y ad un autre Johan de Ristone?—Pole. Quei⁷ put cesty del Counte de Cauntebrige⁸ saver de cesty qest en le Counte de Westmerlonde? Mes el Counte de Stafforde sont iij ou iiij Johans de Ristone.

A.D. 1343.
ad bref as
Justices
de faire
dreit. Et
il pria gar-
nissement
vers le
pleintif a
saver
moun qil
fut mesme
la per-
sone.¹

(43.)⁹ § Trespas vers un Abbe et ses comoignes Trespas

¹ The marginal note, except the word Utlagerie, is from 25,184 alone.

² C., cognu.

³ C., pur.

⁴ Harl., enprisonement; C., imprisonment.

⁵ Harl., serra.

⁶ 25,184, oy.

⁷ Harl., Coment.

⁸ 25,184, Launc[astre].

⁹ From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Trin. 17, Edw. III., R^o 294. It there appears that the action was brought by Hugh de Haggedripe against Michael, Abbot of Clyve (Cleeve, Somerset) and John Cady, James Hywysse,

Walter Blakgrove, Bartholomew de Southamptone, Thomas Saveray, William Wythele, William Totebold, Thomas Broun, Henry de Bristolle and Gilbert Piro, each of whom is described as "Frater," and who are collectively described as "commonachi ejusdem Abbatis": "Frater Johannes atte Halle, et Frater Willelmus atte Bakhouse, conversi ejusdem Abbatis, Robertus Hamelyn, Johannes Gurdeler, Johannes Irishe, porter, Henricus Bourne the Abbotesservant of Clyve, Willelmus Polruweyn, Walterus Colier, Ricardus Seppe, culler, Willelmus le Bruere, Henricus Lange, Johannes filius Simonis

No. 48.

A.D. 1348. in respect of the plaintiff's mill-dams broken down, &c.—The Abbot appeared by attorney, who said:—
 in respect of dams broken down. The attorney could not be admitted to plead the misnomer of his principal, and therefore he justified the act, and, in pleading, showed further that the dams were his, but that was only a protestation, and therefore the issue was taken on the justification.

&c.—The Abbot appeared by attorney, who said:—
 The Abbot's name is W.; judgment of the writ.—
Seton. You cannot say that, because you are attorney for him under such a name.—*Bret.* But, if one person was Abbot when the attorney was made, and another person is Abbot now, that is no reason why he should answer as Abbot.—This exception cannot be allowed without saying that the one Abbot is dead.
 —*Bret.* Then we tell you that the Abbot is lord of the vill, &c., and that a stream runs through the vill, which stream belongs to the Abbot, and the plaintiff constructed a mill, and by means of the pools and dams the water was kept back, and overflowed, and drowned the Abbots meadows, wherefore immediately on the setting up the Abbot and the others broke them down; judgment whether tort in their persons, &c.—*Seton.* That plea is double: one is that,

No. 43.

de esclues del molyn le pleintif debruse, &c.²—Labbe A.D. 1343.
vint par attourne, et dit qe Labbe ad a noun W.; des escluz
jugement du bref.—*Setone*. Ceo ne poietz dire, qar abatuz.
vous estes attourne pur luy par autiel noun.—*Bret*. Lattourne
Et sil fut Abbe quant lattourne fut fait, et ore ne poet
autre persone soit Abbe, nest pas resoun qil re- estre
spoigne come Abbe.—*Non allocatur* sil nust dit³ qe resceu de
celuy fut mort.—*Bret*. Donques vous dioms qe Labbe pleder al
est⁴ seigneur de la ville, &c., et qun rivere court justitia le
par my la ville, quel rivere est al Abbe, et le fet, et en
pleintif fist un molyn, et par les estaunges et esclues pledant
lewe fut retene, et surounda, et noya les prees ovesqe
Labbe, par quei frechement sur le lever Labbe⁵ et moustra
les autres labatirent; jugement si tort en lour per- qil furent
sone, &c.⁶—*Setone*. Ceo plee est double: un qe, se[s]
escluz, et
ceo fut
protesta-
cion, par
 quei lissue
est pris
sur la
justifica-
cion.¹

" le Bret, Willelmus Croudene,
" Willelmus Bruwersman, Ro-
" bertus Coke, Willelmus Cartere,
" Willelmus Botequereye, et Berlo
" Coke."

¹ The marginal note, except the word Trespas, is from 25,184 alone.

² The declaration was, according to the record, that the defendants with force and arms "*herbam ipsius Hugonis apud Clyve nuper crescentem, ad valentiam sexaginta solidorum, cum bobus, vaccis, et affris depasti fuerunt, conculcaverunt, et consumpserunt, et in solo suo ibidem foderunt, et terram inde projectam ad valentiam quadraginta solidorum. ceperunt et asportaverunt, et exclusas stagni molendini sui ibidem frerunt, per quod idem Hugo proficuum molendini prædicti, videlicet tolneti, . . . per sexdecim dies, . . . amisit.*"

³ dit is omitted from Harl.

⁴ 25,184, fuit.

⁵ Labbe is omitted from C.

⁶ The plea was, according to the record, as to the first part of the declaration "*Not Guilty*" upon which issue was joined. "*Et, quo ad hoc quod prædictus Hugo eis imponit quod ipsi vi et armis fregerunt exclusas stagni sui molendini prædicti, dicunt quod ipsi nihil fecerunt contra pacem Regis, quia idem Abbas dicit quod ipse est dominus manerii de Clyve integri in dominico et servitio, et quod idem Hugo est tenens ejusdem Abbatis de omnibus terris et tenementis suis in eodem manerio, et quia idem Hugo de novo cepit ædificare quoddam molendinum in quadam ripa ejusdem Abbatis currente per medium prædicti manerii, et quasdam exclusas molendini prædicti in medio aquæ prædictæ levavit, per quam levationem cursus aquæ ripæ præ-*"

No. 44.

A.D. 1343. whereas we suppose the dams to be ours, you suppose them to be yours; the other is a justification.
—*Bret.* Answer as to the justification, because the rest could not make an issue; but we mention it by way of protestation, in order to save to ourselves the advantage of claiming on another occasion, &c.
—*Seton.* You came of your own tort, without any such cause; ready, &c.—And the other side said the contrary.

Avowry
upon a
man of
Religion (44.) § Avowry in respect of beasts of the Prior
of Huntingdon, because he was assessed for the tax of
the fifteenth, and did not pay.—*Grene.* We tell you

No. 44.

ou¹ nous supposoms nos esclues, vous les² supposez A.D. 1343.
les³ vos⁴; autre est la justificacion.—*Bret.* Responez
a la justificacion, qar le remenant ne put faire issue;
mes nous le parloms pur protestacion, pur salver a
nous autrefoith lavantage de clamer, &c.—*Setone.*
Vous venistes⁵ de vostre tort demene, saunz tiel
cause; prest, &c.—*Et alii e contra.*⁶

(44.)⁷ § Avowere des bestes le Priour de Huntin-
done, pur ceo qil fut assis a la taxe de la xv^e, et
ne paia pas.⁸—*Grene.* Nous vous dioms qe luy et

Avowere
sur
homme
religious

"dictas ita obtruxit quod sex
"acras frumenti et tres acras
"pasturas ejusdem Abbatis eidem
"ripas contiguas inundatas fuerunt,
"idem Abbas exclusas predictas
"recenter prostravit et
"eradicavit, sicut ei bene licuit,
"&c., in cuius auxilium præ-
"dicti frater Johannes Cady et
"alii dicunt quod ipsi ad præ-
"missa facienda venerunt et
"non aliquo alio modo, et hoc
"parati sunt verificare, et petunt
"judicium," &c.

¹ ou is omitted from 25,184.

² les is omitted from 25,184.

³ 25,184, le.

⁴ C., voz.

⁵ 25,184, venisteez.

⁶ The replication upon which
issue was joined was, according to
the roll, as follows:—"Et prædictus
"Hugo, non cognoscendo quod
"prædicta ripa sit ipsius Abbatis,
"nec quod ipse Hugo tenet
"aliqua tenementa de ipso
"Abbate, dicit quod idem Abbas
"et alii per præmissa versus
"eum allegata de transgressione
"prædicta se excusare non
"debent, quia dicit quod ipsi
" vi et armis exclusas

"prædictas de injuria sua propria
"fregerunt, absque
"hoc quod aliqua terra seu
"pastura ipsius Abbatis per
"levationem exclusarum prædic-
"tarum inundatas fuerunt."
Nothing further appears except the
award of the *Venire*.

⁷ From Harl., 25,184, and C.,
but corrected by the Record,
Placito de Banco, Trin. 17 Edw.
III. R^o 186, d. It there appears
that the action was brought by
Reginald, Prior of the Church
of St. Mary, Huntingdon, against
John Bulli, John de Cantebrige,
and John son of Geoffrey le
Scriveyn. According to the de-
claration on the roll two of the
Prior's horses were taken "in
"villa de Huntyngdone in
"quodam loco qui vocatur le
"Heyestrate."

⁸ According to the record the
avowry was that certain persons
had been commissioned, in the
Chancery, in the 15th year of the
reign, to assess the wools granted
to the King in the County of Hun-
tingdon, "videlicet ducentos tri-
"ginta et quatuor saccos, sex
"petras, et sex libras et

No. 44.

A.D. 1343. that he and his predecessors held this land, for which he supposes that we ought to be assessed, in frank-almoign before the twentieth year of the reign of the grandfather of the present King; and before that time, and then, and since, we have paid tenths for these lands, as for lands annexed to our spiritualities. And it was ordained by the King's Council that Religious persons who are not summoned to Parliament by reason of holding such lands shall not be charged,¹ and we were not summoned; judgment whether you can avow the distress.—*Seton*. Taxable for a tax granted to the King, and he showed that the particular lands are subject to payment of tenths, and not taxable among the laity, and that for a reason.

The avowant was put to answer.

¹ In the Parliament Roll of 14 Edward III., there is the following entry: (17) "Acordez est qe Abbes, et Priours et autres gentz de Religion, qi paient lour Dismes, et qi ne sont pas somons de venir au Parlement, eient Briefs de

"surseer de lever le Neofisme de eux tanqe a la Quinzeyne de Seint Michel."

This was renewed in more general terms in the following year. (Parliament Roll. 15 Edw. III., No. 32.)

No. 44.

ses predecessours ount tenu ceste terre, pur quel il suppose qe nous duissoms estre assis, en pure et perpetuel almoigne avant lan xx lai^{el} le Roy qore est; et devant cel temps, adonques, et puis, pur celes terres, come des terres annexes a nostre espiritualte avoms paye dismes. Et par Counseil le Roy fut ordine qe les Religious qe ne sount pas somons au Parlement par resoun de tieles terres ne serrqunt pas charges, et nous ne fumes pas somons; jugement si la destresse puisse avower.²—*Setone*. Taxable

A.D. 1343.
pur taxe
graunteau
Roi, qe
moustra
qe celes
terres sont
dismables,
et non pas
taxables
entre lais,
et ceo pur
cause.
Lavowant
est mys de
respon-
dre.¹

"dimidiam, de anno prædicto, secundum ratam portionem quindecimæ bonorum mobilium, et immobilium, et ad easdem lanas levandum et colligendum per constabularios cujuslibet villæ." In virtue of this commission "assiderunt prædictam villam de Huntyngdone ad quinque saccos, viginti et quinque petras, undecim libras et dimidiam; et onerarunt prædictos Johannem Bulli et alios qui tunc fuerunt constabularii ejusdem villæ, quod ipsi assiderent eosdem quinque saccos lanæ [&c.] inter tenentes ejusdem villæ, videlicet quemlibet tenentem secundum quantitatem terrarum, tenementorum, et catallorum suorum, et [ad] eandem lanam levandum et colligendum ad opus domini Regis. Et, quia idem Prior tenuit in prædicta villa duo mesuagia, et triginta acras terræ arabilis, et sexdecim solidatas redditus, quæ sunt taxabilia inter laicos et tenentes ejusdem villæ, idem Prior assessus fuit ad tres petras et duas libras lanæ, quam quidem lanam idem Prior solve

"recusavit—advocant ipsi captionem unius equi pro anno prædicto." The avowry as to the other horse was grounded on a similar commission of the 16th year, in virtue of which the defendants had the assessment and collection of the residue of the fifteenth, of the 15th year.

¹ The marginal note, except the word Avowere, is from 25,184 alone.

² The Prior's plea, according to the record, was "quod ipse tenet tenementa prædicta pro quibus ipsi advocant captionem illam in puram et perpetuam eleemosynam, ut temporalia annexa spiritualibus ecclesiæ suæ prædictæ ante vicesimum annum domini Edwardi nuper Regis Angliæ avi domini Regis nunc, et eodem anno taxatus fuit pro eisdem tenementis cum Clero, et pro quibus soluit decimas cum Clero prædicto. Et dicit quod in Parlamento domini Regis nunc, anno regni sui quartodecimo, extitit ordinatum quod viri religiosi, qui ad idem Parlamentum summoniti non fuerunt, et decimam cum Clero de terris et tenementis

No. 45.

A.D. 1343. and taxed among the laity; ready, &c.—*Grene*. You shall not be admitted to that averment without answering to that which we have said: for that which we have said proves that we are not taxable among the laity, because the lands which, in the time of the King's grandfather, in the twentieth year of his reign, as above, were in the hands of persons of Religion, were assessed to the tenths, by Ordinance, as temporalities annexed to their spiritualities.—*SHARDELOWE*. He has nothing to do with that which you allege specially; and if such a matter be found by inquest, then aid yourself by it; and suppose that these lands were your right from so remote a time, and that you had, notwithstanding, always been taxed in respect of this land, do you think that you will not be charged?—as meaning to say that he would.—*Grene* thereupon produced a writ directing that they should not be charged in respect of such lands, and reciting the agreement, and also the fact that the Prior was not summoned to Parliament.—*HILLARY*. You must answer whether they had this land from so remote a time, or else he will recover damages.

Dower, (45.) § Dower. The tenant vouched, in Cumber-
 where two land, and Westmoreland, Robert Parnyng¹ and
 were vouched another. To the *Alias Cape ad valentiam* the Sheriff

¹ As to this name see *ante* Y.B. 16 Edw. III., Part I. p. xcix., note 1, and Y.B. 16 Edw. III., Part II. p. xvi., note 1, and p. 513, note 2.

No. 45.

et taxe entre les lays¹; prest, &c.—*Grene*. Al avere- A.D. 1343.
ment ne serrez resceu saunz respondre² a ceo qe
nous avoms dit: qar nostre dit prove qe nient tax-
able entre les³ lays,¹ qar les⁴ terres qen temps lai-
lan⁵ xx,⁶ *ut supra*, furent en les⁷ meyns de Religious
furent assis as dismes, par ordinaunce, come tempor-
altes annexes a lour espirualtes.—*SCHARD*. Il nad
qe faire de ceo qe vous alleggez en especial; et, si
tiele chose soit trove par enquest, eidez vous donques;
et jeo pose qe celes terres de si haut temps fuissent
vostre dreit, et, *non obstante*, qe tout temps vous
assez este taxes par resoun de cele terre, quidez
vous⁸ pas qe vous serrez charge? *quasi diceret sic*.
—*Grene* sur ceo mist avant bref qe par resoun des
tielees terres ils ne serrount pas charges, &c., re-
herceaunt lacorde,⁹ et auxi qe le Priour ne fut
pas somons au Parlement.—*Richem*. Le bref nous
ouste pas del averement.—*HILL*. Vous respondrez
sils avoient¹⁰ cele¹¹ terre de si haut temps, ou il
recovera damages.¹²

(45.)¹³ § Dower. Le tenant voucha, en Cumber- Dower,
londe, et Westmerelonde, Robert Parnyng et un ou ij
autre. Al *Cape ad valentiam sicut alias* le Vicounte sount
vouches

" suis ante dictum vicesimum
" annum adquisitis soluerint. de
" hujusmodi lanis quieti essent
" et exonerati. Et dicit quod
" prædicta tenementa sua per-
" quisita fuerunt ante prædictum
" vicesimum annum, et non
" post. Et hoc paratus est
" verificare."

¹ C., leis.

² respondre is omitted from C.

³ les is omitted from C., and Harl.

⁴ 25,184, en.

⁵ lan is omitted from Harl.

⁶ C., vint.

⁷ Harl., lais.

⁸ vous is omitted from 25,184.

⁹ 25,184, and C., la recorde, in-
stead of lacorde.

¹⁰ Harl., y avoient.

¹¹ Harl., dele.

¹² The replication was, according
to the record, " quod prædicta
" tenementa perquisita fuerunt
" post prædictum vicesimum
" annum, &c., et sic taxabilia et
" taxata inter laicos, prout ipsi
" superius advocant." Issue was
joined on this, but nothing appears
on the roll after the award of the
Venire.

¹³ From Harl., 25,184, and C.

No. 46.

A.D. 1343. of Cumberland returned that he had taken ten marks in two Counties, worth of land, of the land of Robert Parnyng, in part satisfaction of the value, and that he had no more, and at the Alias Cape that the other vouchee had nothing whereby he could the writ be summoned. And the Sheriff of Westmoreland was served in one County returned "*tarde venit.*"—*Derworthy*. We pray the County only, and *Sequatur suo periculo*.—*KELSHULIE*. How can you nothing was done have the *Sequatur suo periculo* when the writ is well in the served in one of the counties against one of the other County, vouchees?—*Derworthy*. We pray that he sue against and there- both at his peril.
upon the
Sequatur
suo peri-
culo was
prayed.

Scire facias (46.) § *Scire facias*, against a Dean of the King's upon an Free Chapel, upon a judgment on a recovery rendered Annuity against his predecessor on a writ of Annuity.— recovered against a *Thorpe*. We tell you that the King by his charter, Dean, and which is here, gave us the Deanery, and it is not he said determined in the charter how, or for how long a that he time, to hold, so that it can only be understood to be held at the King's will; judgment whether the writ lies the King's will. against us.—*R. Thorpe*. He does not claim any estate

. No. 46.

de Cumberlonde retourna qil ad pris x marcs² de terre de la terre Robert Parnyng en partie de value, et plus nad il pas,³ et lautre vouche nad⁴ rien ou estre somons. Et le Vicounte de Westmerelonde retourna *tarde venit*.—*Derworthi*. Nous prioms *Sequatur suo periculo*.—*Kels*. Coment averez le *Sequatur suo periculo* quant le bref est bien servi en lun Counte vers lun vouche?—*Derworthi*. Nous prioms qil sue⁵ vers les deux a son peril.

A.D. 1343.
en ij
Countees,
et al *Cape*
sicut alias
bref servi
en lun
countees
soule-
ment, et
lautre
counte
rien fait,
et sur ceo
Sequatur
suo peri-
culo prie.¹

(46.)⁶ § *Scire facias* vers un Dean de la Fraunche⁸ *Scire* Chapelle le Roy, hors dun jugement sur recoverir *facias* hors taille vers son predecessour en bref dannuite.—*recovery* *Thorpe*. Nous vous dioms qe le Roy par sa chartre, et dit qil qe cy est, nous dona la Deane, et en la chartre tient a la nest pas termine coment ne come longement a *volunte le* *Roi*.⁷ *R. Thorpe*. Il ne cleime nul estat en certain,

¹ The marginal note, except the word *Dowers*, is from 25,184 alone.

² 25,184, *mache*; C., *marche*.

³ *pas* is from Harl. alone.

⁴ C., *ad*.

⁵ Harl., *swe*.

⁶ From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Trin. 17 Edw. III., R^o 362. It there appears that the *Scire facias* on a judgment in Annuity was brought by the Abbot of Lire against Robert de Kyngeston, Dean of Wimborne, for arrears of annuity recovered by a previous Abbot against Master Richard de Clare, a previous Dean.

The words of the marginal note, except *Scire facias*, are from 25,184 alone.

⁸ Harl., *Fraunke*.

⁷ The plea was, according to the record, "quod hujusmodi breve
"versus aliquem minorem statum
"habentem quam ad terminum
"vitæ manuteneri non potest, et
"dicit quod status quem ipse
"habet in prædicto decanatu est
"per literas domini Regis patentes,
"quas profert hic in Curia, in
"hæc verba—'Edwardus Dei
"gratia Rex Angliæ et Franciæ,
"et dominus Hiberniæ, omnibus
"ad quos præsentis literæ per-
"venerint salutem. Sciatis quod
"dedimus et concessimus dilecto
"clerico nostro Roberto de Kynges-
"tone decanatum liberæ capellæ
"nostræ de Wymburnemynstre,
"vacantem, et ad nostram dona-

No. 46.

A.D. 1343. with certainty, and he does not state any cause why the writ should not lie against him; judgment; and we pray execution.—*Thorpe*. If any other person make such a deed and gift without certainty, it is certain that a freehold passes; but with respect to the King it is not so, for if he gave land or tenements in such a manner, the donee would hold only at his will.

No. 46.

et ne dit pas cause par quei le bref ne girreit vers A.D. 1343. luy; jugement; et prioms execucion.¹—*Thorpe*. Si autre persone face tiel fait et doun en noun certain *certum est* qe franctenement passe; mes quant au Roy il nest pas issi,² qar sil³ dona terre ou tenementz par la manere il navera forse a sa volunte.⁴

"tionem spectantem, habendum
"cum suis juribus et pertinentiis
"quibuscunque. In cujus rei
"testimonium [&c.]. Et, ex quo
"per literas illas status ejusdem
"Roberti in decanatu prædicto
"in certo non determinatur. petit
"judicium si ipse ad breve præ-
"dictum respondere debeat, &c.
"Et si videatur Curie quod ipse
"de tali statu debeat respondere,
"dicere ea quæ sufficient," &c.

¹ The Abbot's replication was, according to the record, "quod ex
"quo prædictus Robertus non
"dedit quin ipse est Decanus
"de Wymbourne, prout per
"breve prædictum supponitur, et
"quin ipse habeat talem statum
"in eodem decanatu quod ipse
"ad breve prædictum debeat res-
"pondere, et nihil ad hoc res-
"pondet, petit, ut prius, execu-
"tionem," &c.

² Harl., ici; C., icy.

³ Harl., qaunt il, instead of qar sil.

⁴ According to the roll the Dean, after an adjournment, prayed aid of the King. There were then further adjournments, "et interim
"loquendum est cum domino
"Rege." The King then sent his writ close to the Justices, dated the 30th of January in the 18th year of the reign, reciting the proceedings, and directing the Justices to proceed "proviso semper quod
"ad judicium inde reddendum,

"nobis inconsultis, nullatenus
"procedatis." After another ad-
"journment the parties appeared,
"and "idem Decanus nihil dicit
"quare prædictus Abbas execu-
"tionem inde versus eum habere
"non debet. Et quia Justiciarii
"hic non possunt procedere ad
"judicium, &c., prout patet in
"brevis Regis superius irrotulato,
"domino Rege inconsulto, datus
"est eis dies hic in Octabis
"Sancti Martini. Et interim
"loquendum est cum domino
"Rege."

On the day given "Decanus
"dicit quod cum prædictus Abbas
"per breve suum de Scire facias
"nititur ipsum Decanum et
"decanatum suum prædictum
"de prædicto annuo redditu, et
"hoc per quendam contractum
"inter quendam quondam Abba-
"tem de Lyra prædecessorem
"ipsius Abbatis nunc et quendam
"Martinum, adtunc Decanum de
"Wymburne, prædecessorem ipsius
"Decani, habitum, assensu patroni
"decanatus prædicti Ordinarii
"loci illius et Capituli de
"Wymburne prædicti super hoc
"non obtento, et hoc per
"Judices ecclesiasticos, et etiam
"idem Abbas in recordo unde
"istud breve de Scire facias
"sumpsit originem supponit
"Decanum loci prædicti pro
"prædicto annuo redditu habuisse
"omnes decimas de Shapewyke,

No. 47.

A.D. 1343. (47.) § The wife of Henry le Vavasour sued execution upon a fine, and because in the fine the words "*cum pertinentiis*" occurred once more than in the *Scire facias*, and so there was a variance, HILLARY said to her that she must sue another *Scire facias*. And, nevertheless, there was in the *Scire facias* one "*cum pertinentiis*" which might have referred to the three manors included; but in the fine the words "*cum pertinentiis*" occurred twice.

No. 47.

(47.)¹ § La femme Henre² Vavassour suyt execu- A.D. 1343.
cion hors dun fyn, et pur ceo qen la fyn fut plus par
un *cum pertinentiis* qen le Scire *facias*, et issint ^{Scire}
variaunt, HILL. luy dit qe il suesist autre. *Et tamen* ^{facias}
en le Scire *facias* fut un *cum pertinentiis* qe purreit ^{hors dune}
aver referu⁴ a les iij maners compris; mes en la ^{fyn fut}
fyn furent deux *cum pertinentiis*. ^{abatu pur}
^{variaunce}
^{entre bref}
^{et la fyn.}³

"Kyngestone Lacy, et Bradeforde,
"apud Shapewyke est una per-
"sona de Shapewyke qui percipit
"decimas ibidem pro majori
"parte, et Canonici de Wymburne-
"mynstre percipiunt decimas de
"Kyngestone Lacy, et Bradeforde,
"pro majori parte, et eas perceper-
"unt a tempore quo non extat
"memoria, et petit iudicium si
"per factum prædicti quondam De-
"cani prædecessoris, &c., qui nul-
"lum alium statum habuit in de-
"canatu prædicto quam ad termin-
"um vite sue tantum, sine assensu
"patroni, Ordinarii, et Capituli
"loci prædicti, qui est libera
"capella domini Regis, præsertim
"cum prædictus Abbas nihil de
"assensu prædicto ostendit Curie
"nisi contractum inde coram
"Judicibus delegatis inter præ-
"decessorem ipsorum Abbatis et
"Decani habitum, ipse Decanus
"et capella domini Regis præ-
"dicta de prædicto annuo redditu
"onerari debeant," &c.

There were several further ad-
jourments with the clause "et
interim loquendum est cum
domino Rege," but nothing
more appears on the roll.

¹ From Harl., 25,184, and C.
There is in the *Placita de Banco*,
Trin. 17, Edw. III., R^o 400, an
enrolment of a *Mittimus* sending
back a transcript of a foot of a

fine which had been removed into
the Chancery. It was levied be-
tween Henry le Vavasour and
Constance his wife, plaintiffs, and
Roger de Fryston, chaplain, de-
forciant, *sur don, grant, et render*,
"de manerio de Stubbuswaldynge
"cum pertinentiis in Comitatu
"Eboraci, et de tertia parte
"manerii de Cokryngton cum
"pertinentiis in Comitatu Lin-
"colnæ," which were settled on
Henry and Constance and the
heirs of Henry for ever. On the
death of Henry it was represented
on behalf of Constance "quod
"quidam Johannes de Brynkhill,
"Radulfus de Rydeforde, et
"Robertus de Yerdeburghes tres
"partes prædictæ tertiæ partis
"prædicti manerii de Cokryngtone,
"et quidam Thomas Wake de
"Lydelle quartam partem ejus-
"dem tertiæ partis manerii
"prædicti ingressi sunt, et eas
"tenent contra, &c. Et petit
"breve ad præmuniendum eos,
"&c. Et ei conceditur retorna-
"bile hic a die Sancti Michaelis
"in xv dies," &c. See further
Y.B., Mich. 17 Edw. III., No. 33.

² The words of the marginal
note, except *Scire facias*, are from
25,184 alone. In Harl., the note
is *Execucion hors dun fyn*.

³ C., Henry.

⁴ 25,184, *referri*; C., *afferru*.

(611)

APPENDIX.

APPENDIX A.

RECORD OF THE CASE, HILARY, 17 EDWARD III., No. 48.

(*Placita coram Rege*, "Rex" R^o. 30, d.)

MIDD'. Die Lunæ proximo post festum Sancti Petri in Cathedra anno regni domini Regis nunc decimoseptimo, regni vero sui Franciæ quarto, in pleno Concilio domini Regis apud Westmonasterium convocato, coram Roberto Parnyng Cancellario domini Regis, Willelmo Scot Capitali Justiciario domini Regis, et aliis ipsius domini Regis fidelibus tunc ibidem præsentibus, venit quidam Thomas de Eboraco, asserens se velle prosequi versus Thomam de Estryngtone de Eboraco, mercer, de roberia et pace domini Regis nunc fracta. Et invenit plegios de prosequendo inde appellum suum versus præfatum Thomam de Estryngtone, scilicet Simonem Heyroun de Londoniis, et Johannem Caperon de Eboraco seniore, mercer. Et super hoc prædictus Thomas de Estryngtone præsens in Curia apud Westmonasterium attachiatus est per Marescallum et ductus hic in Curia, &c. Et prædictus Thomas de Eboraco instantèr appellat præfatum Thomam de Estryngtone de roberia et pace domini Regis nunc fracta, de eo quod, ubi idem Thomas de Eboraco fuit in pace Dei et domini Regis nunc, nocte diei Lunæ in Festo Sanctæ Luciæ Virginis anno regni Regis nunc quindécimo, in civitate Eboraci, in quodam vico ejusdem civitatis vocato Blaykstrete, in parochia Sancti Wilfridi, ibi venit prædictus Thomas de Estryngtone, simul cum Johanne de Asshetone, Willelmo de Sutton de Bothum, et Thoma de Neusum, quos idem Thomas de Eboraco appellaret de eadem roberia, si præsentesset hic in Curia, &c., felonice ut felo domini Regis insidiando, et insultu præmeditato, contra pacem domini Regis, coronam, et dignitatem suam, nocte diei et in civitate prædictis, et bona et catalla ipsius Thomæ de Eboraco in possessione sua ibidem existentia, videlicet, unum cupam de Perle argentatam et deauratam, et viginti et septem petris vocatis gerneiz, et viginti et septem petris nominatis saphires ewages munitam et ornatam, pretii ejusdem cupæ viginti librarum, viginti libras Sterlingorum in denariis numeratis, quaterviginti Florenos de

scuto pretii cujuslibet Floreni quadraginta denariorum, sexaginta Florenos de Pavylioun pretii cujuslibet quatuor solidorum, argentum et plate pretii trecentarum librarum, unum par de plates pretii centum solidorum, et alia utensilia domus, videlicet vasa argentea, robas, lectos, et alia bona et catalla sua, ad valentiam quadraginta librarum, ibidem inventa felonice deprædatus fuit, cepit, et asportavit. Et insuper ipsum Thomam de Eboraco ibidem eadem nocte ceperunt et ipsum usque horam mediæ noctis ibidem imprisonaverunt. Et postea, per conspirationem inter ipsum Thomam de Estryngtone et alios superius in appello prædicto nominatos ibidem factam, coegerunt ipsum Thomam de Eboraco Civitatem prædictam abjurare, ita quod idem Thomas de Eboraco ad Civitatem prædictam accedere hucusque non audebat, nec jus suum in hac parte versus eos prosequi, secundum legem et consuetudinem regni, præ timore mortis. Et, si prædictus Thomas de Estryngtone feloniam prædictam et alia præmissa sibi imposita velit dedicere, prædictus Thomas de Eboraco paratus est hoc probare versus eum tanquam felonem Regis per corpus suum vel prout Curia, &c. Quæ quidem cupa deportata fuit in Curia a Thesaurario domini Regis per Thomam del Clay, clericum Johannis de Estone, ad inspiciendum, &c.

Et prædictus Thomas de Estryngtone, disadvocando penitus et disclamando cupam prædictam, defendit omnem feloniam et roberiam, et quicquid est contra pacem domini Regis, coronam, et dignitatem suam, et dicit quod ipse in nullo est culpabilis de felonia seu maleficiis prædictis sibi impositis, et de bono et malo ponit se super patriam. Et prædictus Thomas de Eboraco similiter.

Ideo veniat inde jurata coram domino Rege a die Paschæ in xv dies, ubicunque, &c. Et prædictus Thomas de Estryngtone interim committitur Marescallo, &c.

Et super hoc testatum est hic in Curia pro domino Rege quod prædicta cupa est dominæ Philippæ Reginæ Angliæ et extra Thesaurum suam [*sic*] felonice furata, per quod prædictus Thomas de Eboraco statim allocutus est qualiter se velit inde acquietare.

Dicit quod in nullo est inde culpabilis et de bono et malo ponit se super patriam.

Ideo veniat inde jurata coram domino Rege ad præfatum terminum, &c., de visneto Westmonasterii, &c. Et prædictus Thomas de Eboraco interim committitur Marescallo, &c.

Et idem Thomas de Eboraco petit breve Vicecomiti Eboraci de attachiando prædictos Johannem de Asshetone, Willelmum de Suttone de Bothum, et Thomam de Neusum per corpora sua, &c. Et habeat, &c. Et præceptum est Vicecomiti Eboraci

quod attachiet eos per corpora sua, &c., et eos habeat coram domino Rege ad præfatum terminum, &c., ad respondendum, &c.

Et sciendum quod cupa prædicta interim liberatur Johanni de Estone, clerico domini Regis, ad salvo custodiendum, &c., et inde respondendum, &c.

Et appellum prædictum affilatur inter recorda termini Sancti Hilarii anno decimoseptimo domini Regis nunc.

Postea, continuato inde processu usque in Octabas Sanctæ Trinitatis anno regni domini Regis nunc decimoseptimo, ad quem diem coram domino Rege apud Westmonasterium venit prædictus Thomas de Eboraco in propria persona sua. Et prædictus Thomas de Neusum similiter venit et reddidit se prisonæ Marescalli Regis hic in Curia, qui committitur Marescallo. Et statim per Marescallum ductus venit. Et prædictus Thomas de Eboraco instantanter appellat præfatum Thomam de Neusum de roberia, feloniam et maleficiis prædictis sub hujusmodi verbis, et sub eadem forma qua superius alias appellavit præfatum Thomam de Estryngtone, &c.; et si prædictus Thomas de Neusum roberiam, feloniam, et maleficia prædicta velit dedicere, prædictus Thomas de Eboraco paratus est hoc probare versus eum, tanquam felonem Regis, prout Curia Regis consideraverit, &c.

Et prædictus Thomas de Neusum defendit omnem roberiam, et feloniam, et quicquid est contra pacem domini Regis, &c. Et bene defendit quod ipse in nullo est culpabilis de feloniam seu maleficiis in prædictis sibi impositis, et de bono et malo ponit se super patriam. Et prædictus Thomas de Eboraco similiter.

Ideo veniat inde jurata coram domino Rege in Octabis Sancti Michaelis, ubicunque, &c. Et idem Thomas de Neusum interim committitur Marescallo, &c.

Postea venerunt Johannes de Harum, Henricus Goldbetere senior, Walterus de Kelsterne, Rogerus de Oxtone, Willelmus de Folkerthorpe, Ricardus de Burtone, Johannes de Kyrkby, Thomas de Benetland, Henricus Goldbetere junior, Robertus de Crayke, Nicholas de Frestone, et Simon de Sadberghe, omnes de Comitatu Eboraci, Johannes de Shirburne de Newerke de Comitatu Notinghamiæ, et Willelmus de Thorpe de Londoniis, cordwaner, et manuceperunt prædictos Thomam de Estryngtone et Thomam de Neusum, habendi eos coram domino Rege ad præfatas Octabas Sancti Michaelis ubicunque, &c., videlicet, corpora pro corporibus, &c., et etiam de bono gestu suo erga præfatum Thomam de Eboraco et alios quoscunque, &c.

Ad quas Octabas Sancti Michaelis anno xvij^o eorum domino Rege apud Eboracum venerunt prædictus Thomas de Eboraco

in propria persona sua, et prædictus Johannes de Asshetone venit hic in Curia et reddidit se prisonæ Marescalli Regis, &c., qui committitur Marescallo, &c. Et statim per Marescallum conductus venit.

Et prædictus Thomas de Eboraco appellat prædictum Johannem de Asshetone de roberia, feloniam, et maleficiis prædictis, sub hujusmodi verbis et eadem forma qua superius alias appellavit præfatum Thomam de Estryngtone, &c. Et si prædictus Johannes roberiam, feloniam, et maleficia prædicta velit dedicere, prædictus Thomas de Eboraco paratus est hoc probare versus eum, tanquam felonem Regis, prout Curia Regis consideraverit, &c.

Et prædictus Johannes defendit omnem roberiam, et feloniam, et quicquid, &c., et dicit quod in nullo est culpabilis, et de bono et malo ponit se super patriam. Et prædictus Thomas de Eboraco similiter.

Ideo veniat inde jurata coram domino Rege a die Sancti Michaelis proximo præterito in tres septimanas, ubicunque, &c. Et prædictus Johannes de Asshetone interim dimittitur per manucaptionem Johannis de Shirburne, Willelmi de Meryngtone, Hamonis de Hessian, et Johannis de Wiltone omnium de Comitatu Eboraci, qui eum manuceperunt, habendi coram Rege ad præfatum terminum, videlicet, corpora pro corpore, &c.

Ad quem diem coram domino Rege apud Eboracum venit prædictus Thomas de Eboraco in propria persona sua, et prædicti Thomas de Estryngtone, Thomas de Neusum, et Johannes de Asshetone similiter venerunt, &c.

Et juratores de Civitate Eboraci, ex consensu partium electi et triati, similiter veniunt. Qui dicunt super sacramentum suum quod prædicti Thomas de Estryngtone, Thomas de Neusum, et Johannes de Asshetone in nullo sunt culpabiles de roberia et feloniam prædictis sibi impositis, nec unquam ea occasione se subtraxerunt.

Ideo ipsi eant inde quieti.

Et prædictus Thomas de Eboraco committitur Marescallo pro falso appello suo prædicto, &c.

Postea in Crastino Animarum hoc anno venit prædictus Thomas de Eboraco per Marescallum conductus. Et prædictus Willelmus de Suttone de Bouthum per Vicecomitem ductus similiter venit. Et idem Thomas eum appellat de roberia et feloniam prædictis in forma qua alias versus prædictos Thomam de Estryngtone et alios narravit, &c.

Et prædictus Willelmus de Suttone defendit omnem feloniam, &c., et dicit quod in nullo est inde culpabilis, et de bono et malo ponit se super patriam.

Ideo veniat inde jurata coram domino Rege apud Eboracum hac instanti die Veneris proximo ante festum Sancti Martini . . . qui nec, &c., ad recognoscendum, &c. Et idem Willelmus interim committitur Marescallo, &c.

Ad quem diem venit prædictus Thomas de Eboraco in propria persona sua; et prædictus Willelmus de Suttone per Marescallum ductus similiter venit. Et juratores de Civitate Eboraci, ex consensu partium electi, similiter veniunt. Qui dicunt super sacramentum suum quod prædictus Willelmus de Suttone in nullo est culpabilis de roberia et feloniam prædictis sibi impositis, nec unquam ea occasione se retraxit.

Ideo idem Willelmus eat inde quietus, &c. Et prædictus Thomas committitur Marescallo, &c.

Postea hoc eodem termino Sancti Michaelis prædictus Thomas finem fecit cum domino Rege, prout patet per rotulum finium de termino Michaelis, &c.

APPENDIX B.

RECORD OF THE CASE, TRINITY, 17 EDWARD III., No. 40.

(*Placita de Banco*, R^o. 393.)

BERK. Præceptum fuit Vicecomiti quod, assumptis secum quatuor discretis et legalibus militibus de comitatu suo, in propria persona sua ad Curiam Priorissæ de Lyttelmor de Esthenrethe [accederet] et in plena Curia illa recordari faceret loquelam quæ est in eadem Curia per parvum breve nostrum de Recto inter Johannem Bassat de Esthenrethe petentem et Walterem Bassat de Esthenrethe tenentem, de uno mesuagio et una virgata terræ cum pertinentiis in Esthenrethe, et recordum illud haberet hic ad hunc diem, scilicet, a die Sancti Johannis Baptistæ in xv dies, sub sigillo suo et sigillis quatuor legalium hominum ejusdem Curie ex illis qui recordo illo interfuerunt, et partibus eundem diem præfigeret quod tunc essent hic in loquela illa prout justum fuerit processuræ, et quod haberet hic ad eundem diem nomina quatuor militum, et hoc breve, et aliud breve, quia prædictus Johannes protestabatur se velle prosecui breve suum prædictum in forma Assisæ Mortis Antecessoris, partesque prædictæ in dicta loquela ad captionem dictæ Assisæ placitarunt, et infra dictum

dominium Curiae praedictae non sunt nisi quatuor sectatores ut dicitur, propter quod assisa illa in eadem Curia capi non potest. Fiat executio istius brevis, si causa sit vera, et praedictus Johannes hoc petat, et aliter non.

Et modo praedictus Johannes Bassat venit; et praedictus Willelmus Bassat non venit.

Et Vicecomes mandat quod in propria persona sua accessit ad Curiam Priorissae de Littelmor de Esthenrethe, et in plena Curia illa recordari fecit loquelam praedictam, et Recordum ejusdem Loquelae misit hic sub sigillo suo et sigillis quatuor legalium hominum ejusdem Curiae ex illis qui recordo illi interfuerunt, et partibus diem supradictam praefixit quod essent hic in Loquela illa prout justum fuerit processuræ, et quod Willelmus Wyke, ballivus Curiae praedictae, qui tenet placita ejusdem Curiae, aliud breve inde sibi, ut ballivo ejusdem Curiae, directum et liberatum sibi liberare recusavit. Ideo illud breve ad hunc diem habere non potuit. Cujus quidem recordi tenor talis est:—

Curia Priorissae de Littelmor de Esthenrethe tenta ibidem die Martis proximo post festum Sancti Martini anno regni Regis Edwardi tertii post Conquestum Angliæ sexto-decimo, regni vero sui Franciæ tertio. Johannes Bassat de Esthenrethe ad hanc Curiam tulit parvum breve domini Regis de Recto clausum, et invenit plegios de proseguendo Johannem Kyppyngge et Nicholaum Chosyn, et protestabatur prosequi praedictum breve in forma brevis Assisae Mortis Antecessoris.—Breve in hæc verba: Edwardus Dei Gratia Rex Angliæ et Franciæ et Dominus Hiberniæ Ballivis Priorissae de Littelmor de Esthenrethe salutem. Præcipimus vobis quod sine dilatione, et secundum consuetudinem manerii de Esthenrethe, plenum rectum teneatis Johanni Bassat de Esthenrethe de uno mesuagio et una virgata terræ, cum pertinentiis, in Esthenrethe, quæ Walterus Bassat de Esthenrethe ei deforciat, ne amplius, &c. Et præceptum est duobus sectatoribus Curiae praedictae, videlicet, Johanni Chippyngge, et Nicholao Cosyn, quod summoneant praedictum Walterum Bassat secundum consuetudinem manerii praedicti quod sit ad proximam Curiam, videlicet, a die Martis supradicto in tres septimanas, ad respondendum praedicto Johanni de placito praedicto. Et liberatum est eis praedictum breve ad warrantandum summonitionem praedicto Waltero factam ad proximam Curiam sequentem. Et super hoc datus est dies praedicto Johanni Bassat a die Martis supradicto in tres septimanas secundum consuetudinem manerii, &c.

Curia tenta ibidem die Martis proximo post festum Sancti Andree Apostoli anno supradicto. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe

secundum consuetudinem, &c., in placito Assisæ Mortis Antecessoris. Et super hoc duo sectatores prædicti veniunt in plena Curia, et testificando summonitionem inde factam prædicto Waltero Bassat de essendo ad hanc Curiam ad respondendum prædicto Johanni Bassat in prædicto placito secundum consuetudinem manerii proferunt Ballivis prædictum breve eisdem liberatum per prædictos Ballivos secundum consuetudinem, &c. Et prædictus Walterus essoniatus est supra, et sic remanet secundum consuetudinem, &c. Et datus est dies essoniatori prædicti Walteri a die Martis supradicto in tres septimanas. Et idem dies datus est prædicto Johanni Bassat secundum consuetudinem, &c., et sic remanet.

Curia tenta ibidem die Martis proximo post festum Sancti Thomæ Apostoli anno supradicto. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris secundum consuetudinem, &c. Et prædictus Walterus essoniatus [est] secundum consuetudinem, &c., et sic remanet, &c. Et datus est dies essoniatori prædicti Walteri a die Martis supradicto usque in tres septimanas. Et idem dies datus est secundum consuetudinem, &c., prædicto Johanni Bassat, et sic remanet, &c.

Curia tenta ibidem die Martis proximo ante festum Sancti Hillarii anno regni Regis Edwardi supradicto. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris. Essoniatus est tertio, secundum consuetudinem manerii, &c. Et datus est dies essoniatori prædicti Walteri a die Martis supradicto usque in tres septimanas. Et idem dies datus est prædicto Johanni secundum consuetudinem, &c., et sic remanet, &c.

Curia tenta ibidem die Martis proximo post festum Purificationis beatæ Mariæ anno regni Regis Edwardi tertii a Conquestu Angliæ decimo-septimo. et Franciæ quarto. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe de placito Assisæ Mortis Antecessoris secundum consuetudinem, &c., et petit quod recognitum sit per inquisitionem loco Assisæ Mortis Antecessoris secundum consuetudinem manerii de Esthenrethe si Johannes Bassat, pater prædicti Johannis Bassat de Esthenrethe. fuit seisisus in dominico suo ut de feodo de uno mesuagio et una virgata terræ, cum pertinentiis. in Esthenrethe die quo obiit, et si obiit post coronationem domini Henrici proavi domini Regis nunc, et si idem Johannes Bassat de Esthenrethe propinquior heres ejus sit, secundum consuetudinem manerii de Esthenrethe.

Et prædictus Walterus venit et dicit quod ad illam demonstrationem responderi non debet, quia dicit quod prædictum breve est quoddam breve de Recto, in quo brevi naturaliter

petens narrare debet de jure antecessoris sui, cariendo sibi ipsei jus antecessoris sui, de cujus seisinā et jure petit tenementa in brevi contenta, et inde petit judicium.

Et prædictus Johannes dicit quod quamvis prædictum breve sit quoddam breve de recto, attamen prædictum breve protestatur prosequi in forma brevis Assisæ Mortis Antecessoris secundum consuetudinem manerii, &c., ad quam vero postea communem naturaliter jacet secundum consuetudinem, &c., quædam demonstratio et petitio in brevi originali Assisæ Mortis Antecessoris contenta, et non aliqua narratio per descensum de jure antecessoris ad heredem suum, et hoc prædictus Johannes ponit in considerationem sectatorum Curis. Et prædictus Walterus similiter.

Et prædicti sectatores, per ballivos Curis de prædicto judicio onerati, ponunt judicium in respectum usque ad proximam [Curiam]. Et datus est dies partibus de audiendo judicium suum a die Martis supradicto, secundum consuetudinem, &c., usque in tres septimanas, et sic remanet, &c.

Curia tenta ibidem die Martis proximo post festum Sancti Mathis Apostoli anno supradicto decimo-septimo. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris secundum consuetudinem, &c. Et prædictus Walterus essoniatus [est] supra secundum consuetudinem manerii, &c., de placito Assisæ Mortis Antecessoris unde judicium, et sic remanet, &c. Et datus est dies essoniatori prædicti Walteri a die Martis supradicto usque in tres septimanas. Et idem dies datus est prædicto Johanni secundum consuetudinem, &c., et sic remanet.

Curia tenta ibidem die Martis proximo ante festum Sancti Benedicti, [anno] supradicto decimo-septimo. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris secundum consuetudinem, &c. Et prædicti Johannes et Walterus petunt continuantiam, et habent diem ad præ[m] partium a die Martis supradicto usque in tres septimanas de audiendo judicium suum secundum consuetudinem, &c.

Curia tenta ibidem die Martis proximo post festum Sancti Ambrosii anno supradicto decimo-septimo Johannes. Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris secundum consuetudinem, &c. Et petunt ad audiendum judicium suum de placito prædicto.

Et sectatores Curis, onerati per Ballivos Curis de judicio dando secundum consuetudinem, &c., dicunt se nondum super hoc esse consultos, et ponunt adhuc judicium prædictum in respectum usque ad proximam [Curiam]. Et datus est dies

partibus de audiendo iudicium suum a die Martis supradicto usque in tres septimanas, et sic remanet secundum consuetudinem, &c.

Curia tenta ibidem die Martis proximo post festum Sancti Marci Evangelistæ anno supradicto decimo-septimo. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris secundum consuetudinem, &c. Et petunt audire recordum et iudicium suum de placito præcedente supra.

Et sectatores Curisæ veniunt. Et dicunt quod naturaliter in protestatione prædicta jacet demonstratio in brevi originali de Morte Antecessoris contenta, et non narratio sicut in brevi de Recto. Quare prædicti sectatores considerant quod prædictus Walterus ultra responderet.

Ideo prædictus Walterus venit et dicit quod adhuc ad protestationem prædictam non tenetur respondere secundum consuetudinem manerii, &c., quia dicit quod nunquam in eadem Curia facta fuit aliqua protestatio in parvo brevi de Recto clauso, nec unquam fuit in Curia illa consuetudo ad protestationem aliquam faciendam. sed prosequi prædictum breve in natura sua propria, et inde petit iudicium.

Et prædictus Johannes dicit quod, tempore quo prædictum breve concessum fuit et ordinatum, protestari usitatum est hucusque sub qua forma petens in prædicto brevi prosequi actionem suam voluerit, et adhuc usitatum est in qualibet Curia de Antiquo Dominico, et inde petit iudicium si ad protestationem illam respondere non tenetur. Et prædictus Walterus similiter.

Et super hoc sectatores Curisæ, onerati per ballivos de iudicio, ponunt iudicium in respectum usque ad proximam [Curiam]. Et datus est dies partibus de audiendo iudicium suum de placito prædicto a die Martis supradicto usque in tres septimanas secundum consuetudinem, &c.

Curia tenta ibidem die Martis proximo post festum Sancti Aldelmi anno supradicto decimo-septimo. Johannis Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe de placito Assisæ Mortis Antecessoris secundum consuetudinem manerii, &c. Et prædictus Walterus essoniatus est supra secundum consuetudinem, &c., unde iudicium, &c. Et datus est dies essoniatori prædicti Walteri a die Martis supradicto usque in tres septimanas. Et idem dies datus est prædicto Johanni, et sic remanet secundum consuetudinem, &c.

Curia tenta ibidem die Martis proximo ante festum Sancti Barnabæ Apostoli anno supradicto decimo-septimo. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat

de Esthenrethe de placito Assisæ Mortis Antecessoris secundum consuetudinem manerii, &c. Et prædictus Walterus essoniatus est.

Et super hoc prædictus Johannes venit, et dicit quod essonium non jacet, quia essoniatus fuit ad proximam Curiam præcedentem, et ideo non jacet secundum consuetudinem, &c., et unde petit iudicium.

Et prædictus Walterus dicit, per essoniatorem suum, quod post quamlibet apparantiam tenens potest ter essoniari in hoc brevi, in quacunque protestatione breve protestatum fuerit. Et inde petit iudicium.

Et Johannes dicit quod, ante apparantiam tenentis, tenens ter potest essoniari secundum consuetudinem, &c., et post apparantiam non habebit nisi unum essonium secundum consuetudinem, &c. Et hoc ponit super sectatores Curisæ, &c. Et essoniator prædicti Walteri similiter.

Et super hoc sectatores Curisæ, per ballivos onerati de inde dando iudicio, dicunt quod tenens in isto brevi, sub quacunque protestatione protestatur prosequi, post apparantiam non habebit nisi unum essonium, quare consideratum est per prædictos sectatores quod essonium illud pro nullo habeatur, sed vertetur in defaltam. Quare per defaltam ipsius Walteri capiatur assisa secundum consuetudinem manerii de Esthenrethe.

Et pro defectu juratorum assisa ponitur in respectum usque ad proximam [Curiam], quia non sunt in Curia nisi quatuor sectatores, et sic remanet.

Curia tenta ibidem die Martis proximo post festum Apostolorum Petri et Pauli anno prædicto decimo-septimo. Johannes Bassat de Esthenrethe præobtulit se versus Walterum Bassat de Esthenrethe in placito Assisæ Mortis Antecessoris secundum consuetudinem manerii, &c. Et ipse venit. Et super hoc venit Vicecomes Berkescire prætextu cujusdam brevis domini Regis sibi directi. [et] recordari fecit loquelam prædictam. Et præfixit diem partibus supradictis quod sint coram Justiciariis domini Regis de Banco apud Westmonasterium a die Sancti Johannis Baptistæ in xv dies proximo futuros in loquela illa prout justum fuerit processuræ.

Et virtute ejusdem brevis recordum istud factum est, et loquela remota in forma prædicta. In cujus rei testimonium Johannes Kyppege, Nicholaus Cosyn, Walterus atte Dene, et Robertus le Smythe, quatuor legales homines ejusdem Curisæ ex illis qui recordo illi interfuerunt præsentibus sigilla sua apposuerunt.

Et quia Willelmus de Wyke, ballivus Curisæ prædictæ Priorissæ aliud breve, scilicet primum breve de Racto, quod sibi inde venit ut ballivo, &c., eidem Vicecomiti liberare recusavit, ut

patet superius, præceptum est eidem Vicecomiti quod distringat prædictum Willelmum ballivum, &c., per omnes terras, &c., et quod de exitibus, &c., ita quod illud breve eidem Vicecomiti liberet, &c. Et idem Vicecomes breve illud habeat hic a die Sancti Michaelis in xv dies. Et partes prædictæ tunc ulterius procedant in loquela prædicta prout Curia consideraverit.

Et super hoc prædictus Johannes Bassat ponit loco suo Johannem de Southmortone, &c. Idem dies datus est eidem Johanni hic, &c.

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If partition be made of a manor to which an advowson is appendant, the advowson remains appendant, and is not in gross, 500-508.

AID OF THE KING :

Not granted in Replevin where the King's bailiff avows for suit to a Hundred Court claimed for the King by prescription, 444.

Prayed in *Scire facias* on recovery in Annuity, by one who had donation of the Deanery of the King's Free Chapel, 607, note 4.

AID-PRAYER :

Aid will not be granted where the tenant, having a fee on the day of the purchase of the writ, has, pending the writ, aliened and taken back an estate for life, 84-96.

Aid granted in Replevin when there had been no plea beyond the avowry, 146-148.

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Where lands are partible by custom, one may have aid of his brother who is his coparcener, after partition made, and, if the brother fail to appear, of his uncle who made partition with his father, and so upwards from generation to generation, 200-202.

Where lands have been exchanged by virtue of the King's Charter, and aid has been had of the King in lieu of voucher, aid may be further had by a tenant for life of one in remainder, 202.

Aid may be had of one in remainder in fee tail after possibility of issue extinct, where there is a further remainder to his right heirs, because all the right is in him, 578-580.

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Of entry of essoin, 124-126.

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ANCIENT DEMESNE :

Removal of cause from Court of, into the Common Bench, where proceedings on the ordinary Little Writ of Right were by protestation pursued in the form of a Mort d'Ancestor, and the number of suitors was insufficient to constitute an Assise, 599, 617-623.

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ANNUITY :

In claiming arrears the plaintiff may claim a sum less than the whole sum which would be due from the commencement of the charge to the purchase of the writ, 184.

Pleadings in, where the annuity was granted until the plaintiff's advancement to a benefice of Holy Church, 182-186.

Pleadings in, where the annuity was conditional on the plaintiff giving service and advice in peace and war, and the question arose whether

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they had to be given out of the realm as well as in, 334-336.

Where both plaintiffs and defendants are ecclesiastics, a title by prescription is insufficient, without a specialty to show the origin of the annuity, 460, 461, note 7; 463, note 3.

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APPEAL :

Form of wager of battle in Appeal of Death, 20-22.

Mainprise of plaintiff in, after battle waged, 22.

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Not affected by acquittal after indictment, if within a year, 20-22.

Cannot be brought by a clerk convict who has escaped, 210-212.

Admitted when brought by bill (without writ) in the King's Bench in respect of anything which concerns the King either directly or indirectly, 212-214, 614.

Admitted when brought by bill (without writ) both by Sheriffs and by Coroners, 214.

ASSISE :

When issue is joined on a plea of *Non est factum*, and neither plaintiff nor defendant is party to the deed, the issue is out of point of assise, and shall be tried by a jury, and where the action has been removed into the Common Bench, shall be tried there, and not in the Court of the Justices of Assise, 396.

See DARREIN PRESENTMENT: MORT D'ANCESTOR; NOVEL DISSEISIN.

ATTORNEY :

Has not, in Trespass, to find surety to hear the verdict of a jury, though his principal would have to do so, 6.

Cannot be admitted for defendant in Account, who has found mainprise, 114.

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Cannot appear, instead of the party, to perform the law, after wager of law, 114.

If any one be twice named in a writ, but with some diversity of surname, and has under both names appointed an attorney, who has answered, it must be accepted as a fact that two different persons have been named, 310.

If, however, it be stated on the plea roll that one answered by attorney, and no corresponding warrant can be found on the roll of warrants of attorney, the fact is not established, 312.

Cannot plead misnomer of his principal, because he acts as attorney of the person named in the writ, 596.

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AUDITA QUERELA:

If an *Audita Querela* be sued after the issue of a writ of execution on a statute merchant, but before its return, the obligor can have a *Venire facias* against the obligee, and a stay of execution, 38-40.

Protection not allowed to a plaintiff in, who has sued a *Venire facias*, 288-290, 294-296.

Does not lie for a stranger, *i.e.*, for one who has been enfeoffed by the obligor in a statute merchant, if execution has not been actually effected in his lands, and no stay of execution is warranted by the original writ in such a case, 362-386, 576.

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Is given by Equity rather than by Common Law, 370.

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BARON AND FEME:

If a writ of Trespass be brought by a woman against a man, and he allege that she has been proved to be his wife in Court Christian, he does not thereby establish any disability in her person, but must answer to the writ, though it might be otherwise in an action of Dower, 230-232.

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Several issues may be taken with respect to the tenancy, *e.g.*, whether the demandant's ancestor enfeoffed the tenant's ancestor of part of the tenements after the Statute of *Quia emptores*, so that they could be holden only of the chief lord, and whether the tenant's services for another part are not due to a person other than the demandant by reason of an assignment of dower and consequent attornment, 454-8; 459, note 3.

CHALLENGE :

Of Array of Jurors in Crown cases, 280.

CHANCELLOR, THE :

Delivers by his own hand to the Chief Justice of the King's Bench (without any writ of *Mittimus*) a record of the Common Bench which had been removed into the Chancery for redress of errors, 234 ; 235, note 9.

CHANCERY :

Adjournment of cause from, into the King's Bench, where it was alleged that lands seized into the King's hand as those of an idiot were those of another person, 186-188.

CHANTRY :

A *Quare impedit* lies for presentation to a chantry, and a chantry is not necessarily donative, 196-198.

CHIROGRAPHER, THE :

Of the Common Bench, 152.

CLERK CONVICT :

Cannot, after escape, and commission of further offences, become an appellor, 210-212 ; 213, note 1.

After escape and recapture is redelivered to the Ordinary, 213, note 1.

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COAL-MINES :

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COGNISANCE OF PLEAS :

Questions as to, in Account, where the receipt of money has been partly within a Liberty having cognisance, and partly without, 480-482 ; 483, note 9.

COLLUSION :

Where a Prior brought a writ of Customs and Services against an Abbot, and the latter confessed the action, a *Quale jus* issued to enquire as to collusion, though both parties were persons of religion, but

COLLUSION—cont.

in an action of Annuity which an Abbot brought against a Prior, who confessed it, there was no such enquiry, 82 ; 83, notes 11 and 17.

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Details of a claim of, at particular seasons and times of the year, 350-362.

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Of the Liberty of the Abbot of Westminster, 213, note 1.

The Justices of the King's Bench are Sovereign Coroners of the realm, 214.

COSINAGE :

Where a last seisin was pleaded in abatement of the writ, and the demandant replied that the person whose seisin was alleged was born out of wedlock, this was held to be a good plea, without any express averment that he was a bastard, and issue was joined thereon, 544-546.

COUNCIL, THE :

Decision given in the King's Bench with the assent of, 210-212.

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CUI IN VITA :

Does not lie simply for services, 56, 72.

When it is brought by collusion, for the purpose of depriving executors of their term, execution thereon will be suspended until the completion of the term, though judgment may be given for the demandant, 408-410 ; 411, note 12.

CUSTOMS AND SERVICES :

See COLLUSION.

D

DARREIN PRESENTMENT :

Pleadings in Assise of, against A. and his wife, B., where the last

DARREIN PRESENTMENT—*cont.*

presentation alleged by the plaintiff was by his father, to whom an acre of meadow, parcel of the manor to which the advowson was previously appendant, was given, together with the advowson, by a former husband of B., during her then coverture, and while she had a joint estate in the manor with him, and after he and she had presented. It was held that the last presentation by the plaintiff's father was good, and no usurpation on B. and her former husband, 40-90.

The action is grounded not on the right to an advowson but solely on the possession of the last presentation, whether rightful or wrongful, 48-52.

Proceedings in Error upon judgment in, 234-272.

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Recovery and execution of, by plaintiff in a Borough Court is no bar to a writ of Debt in the Common Bench, if the obligation have not been cancelled, and there be no acquittance, 296-300; 299, note 2; 301, note 2.

Pleadings, and issue in, where the executors of one testator bring an

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action of Debt against the executors of another testator, who deny having had any of their testator's goods in their hands, as executors, since the purchase of the writ, but admit having purchased some of his goods on a sale by the Sheriff after the goods had been seized into the King's hand for the King's debt, 338-342.

See ABATEMENT OF WRITS; EXECUTORS.

DECEIT :

Surety found by a plaintiff in Assise of Novel Disseisin to prosecute an action of Deceit, where the defendant had caused a writ of a higher nature to be brought against himself, in the plaintiff's name, for the purpose of ousting the plaintiff from his first action, 202-204.

Where it is proved that lands have been delivered in consequence of a judgment on default obtained by deceit, the party aggrieved will have restitution of his lands together with the mesne profits, 204.

Action of, to obtain reversal of a fine, where part of the land was Ancient Demesne, 444.

Action of, by chief lord against one who had recovered tenements held of him in *capite* by a *Præcipe in capite*, in which it was adjudged that the plaintiff did not lose court or seignory, and could not, therefore, recover damages specifically for them, 444-446, 482-484.

DEED :

Question whether an error of date in a deed for defeasance of a statute merchant is material when the names of the parties and the sum of money are correctly stated, 290-292; 293, note 6; 296.

A deed by which A. gives tenements to B., and B.'s first-born son, lawfully begotten, has no force or effect in relation to B.'s son, if the latter

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was not in *rerum natura* at the time of the execution of the deed, 412-414; 415, note 8.

See WITNESS.

DEFEASANCE :

Collateral deed of. See DEED; NOVEL DISSEISIN; TENDER.

DETINUE :

Process in action of, the same as in action of Debt, 142, 144-146.

Pleadings in, where the plaintiff alleged that his ancestor had delivered a writing or charter to the defendant for redelivery, and the defendant alleged a subsequent feoffment to his father (by one of two coparceners who had made partition) of the lands mentioned in the charter, and that he held them by descent of inheritance, the plaintiff contending that the supposed parcener died during the life-time of her mother from whom the inheritance descended, upon which question issue was joined, 204-208; 205, note 16; 207, notes 2 and 7; 209, note 1.

DIGNITY, NAME OF :

See ABATEMENT OF WRITS. (Debt.)

DISCONTINUANCE :

There is no discontinuance so long as a day is given on the roll either before or after issue joined, 472.

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DONATION :

Question whether a donation made by the King of the Deanery of a King's Free Chapel, without words to show how, or for how long a time, it was to be held, gives a freehold or only an estate at will, 604-606; 607, notes 1 and 4.

DOWER :

Assignment of, by Escheator, after suit in Chancery, by the description of a moiety of one knight's fee, 118; 119, note 6.

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DOWER—*cont.*

Protection does not lie in action of, either for tenant or for vouchee, 272-278.

It is a good plea in bar to say that the husband was a bastard, and that the tenant, as *mulier puisne* entered and ousted him, but the latter must also aver that he did not die seised, 300-302; 303, note 7.

When the husband's heir is vouched in the County in which the action is brought, and in a foreign County also, and issue is joined on the question whether he has assets or not, judgment is given for the demandant against the tenant before the issue is tried, and the tenant must sue against the vouchee in order to recover to the value, 552.

Pleadings in, where the demand was for a third part of a manor, and one vill only was mentioned in the writ, and where the tenant alleged that the manor extended into two vills, 592.

Voucher in, 602-604.

See ESTOPPEL; REPLEVIN; VOUCHER; WARRANTY.

DURHAM :

The Bishop of, Earl Palatine in the Liberty of, 474.

E

EJECTMENT FROM WARDSHIP :

Writ of, does not lie where the land is held in socage, and not by knight-service, 218-220.

Where the claim to the wardship is disputed, as, for instance, where the person said to have ejected claims to be tenant in tail of the lands, the issue will be on the title and not on the ejectment, 330-332; 331, note 6; 333, note 2; 470-472.

See ABATEMENT OF WRITS.

ENTRY :

When to be brought in the *per*, and when in the *post*, 578.

Aid, upon writ of, 578-580.

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Suit of *Audita Querela*, considered as a branch of, rather than of Common Law, 370.

ERROR :

If, in Assise of Darrein Presentment, judgment has been given for the plaintiff, but the assise remains to be taken as to damages (or the value of the church), the record and process must nevertheless be sent in return to a writ of Error, 62-64 ; 63, note 9 ; 234, 262, 468.

Assignments of errors and proceedings on writ of Error on judgment in Assise of Darrein Presentment, 234-272.

ESSOIN :

Essoin after essoin on the King's service is not admissible, when the warrant for the first essoin has not been produced, 34-36.

Amendment of, 124-126.

For one who prays to be admitted to defend his right, before he has been so admitted, 500.

ESTOPPEL :

If a husband, being seised in fee, aliene and take back an estate to himself and his wife, and the heirs of their two bodies, and after his death the wife accept a third part as dower, together with a sum of money as payment in full, she is not estopped from demanding the remaining two parts, if she has not taken the dower by deed indented, nor executed a deed of release, 86-90.

EVIDENCE :

Where, in an Assise of Novel Disseisin, the jurors had given a special verdict, and had been subsequently examined on several points, but not as to the legitimacy of one who had

EVIDENCE—cont.

recovered in a previous action of Entry in *consimili casu*, and from whom the plaintiff's title was derived, the record of that action, which included a Bishop's certificate of the legitimacy, was accepted as sufficient evidence, without re-examination of the Assise, 386-394 ; 395, notes 1 and 6.

EXECUTION :

See **AUDITA QUERELA ; STATUTE MERCHANT ; WASTE**.

EXECUTORS :

When a writ of Debt is brought against several executors, and one only appears, and the plaintiff declares against him alone in virtue of the Statute 9 Edw. III., c. 3, and it is found by verdict that a deed denied by the appearing executor is in fact the testator's deed, the plaintiff will recover out of the appearing executor's own goods, as well as those of the testator, and out of the testator's goods in the hands of the other executors on the day of the purchase of the writ, 220-222, 226-230.

Query whether he will also recover out of the goods of the non-appearing executors, 226-230.

See **DEBT ; STATUTE MERCHANT ; WAGER OF LAW**.

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FINE OF LANDS, &c.

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FINE OF LANDS, &c.—*cont.*

One who divests himself of land by fine cannot charge the same land for his own benefit, 308.

Reversal, as to parcel, by writ of Deceit in the King's Bench, where that parcel was found to Ancient Demesne, 444.

A fine reversed in its entirety said to be taken out of the Treasury and cancelled, 444, margin.

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FORMEDON :

Attempt to abate a writ of, by bringing an Action of Trespass against a demandant (who had become *covert baron*, pending the writ) and her husband, 126-140.

Where the action was brought on a gift by the demandant's father, and it was pleaded that his grandfather had by charter given the tenements, with warranty, to the tenant's vouches, and the reply was that the grandfather had nothing except at the father's will, the vouches were put to plead that the grandfather held a freehold, and not at will, at the time of the execution of the charter, 548-550; 551, notes 4, 6, and 10.

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GUARDIAN OF THE SPIRITUALITIES :

Question whether during the vacancy of a Bishopric the Archbishop of the Province is Guardian, of common right, or the Dean and Chapter, 282-286.

Question as to the effect of composition touching, 282.

The King will send a writ to the person who takes the office upon himself, without regard to the question of right, 286.

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May be within the fee of a private individual, 574.

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Suit to, 442-444; 445, note 2.

HUSTINGS, THE COURT OF :

See OUTLAWRY.

I

IDIOT :

When lands have been seized into the King's hand, as those of an idiot, and another person traverses the descent of the lands to the idiot, and alleges that the idiot's ancestor enfeoffed him of them, *Quere* whether the remedy is by traverse of the Office found, Petition, or otherwise, 186-188.

INTRUSION :

Action of, 412-414.

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JURORS :

Challenge of array of, in Crown Cases, 280.

Examination of, in Assise, 386-392; 391, note 1.

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KING, THE :

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KING, THE—cont.

Is Patron Paramount of Bishoprics, Deaneries, and other dignities or divisions of Cathedral churches, 538; 541, note 3.

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KING'S BENCH:

Adjournment of cause into, from the Chancery, 186-188.

Practice of, with regard to enrolments of proceedings in Error, 244, 246, 270.

KNIGHT'S FEE:

Relates entirely to service, and not to demesne, 120.

Feoffment of, at one time equivalent to feoffment of a manor, 122.

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MANOR:

Feoffment of, with livery, by description of "a knight's fee," 122.

MAXIM:

Privilegia Statuti sunt stricti juris, 14.

MESNE:

If the mesne has, for good cause, attorned to a person other than the person against whom he brings the action, in respect of the tenements for which the services are due, a plea to that effect is a good bar to the action, and issue will be joined as to the attornment, 446-448; 449, note 8.

A count or declaration by one who holds in service and not in demesne that he has been distrained by his beasts of the plough is good, because in accordance with the usual form though not in accordance with the facts, 584-588; 585, note 4.

Judgment may be given as to the right to be acquitted of services,

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though an issue be pending as to whether the distress was through the defendant's default, 588; 589, note 9.

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Action of Trespass for breaking down, 594-598.

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Writ of, not required when the Chancellor with his own hand delivers a record into the Court of King's Bench, 234; 235, note 9.

MORT D'ANCESTOR:

Assise of, how tried, after removal into the Common Bench, when there are several issues on several summonses, 396-398.

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Attornment to an Abbot, or other religious person, or body, does not cause amortisation, or forfeiture, 92-100.

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NISI PRICES:

Powers of Justices of, 276.

Justices of, have no power to allow a Protection, 278.

NOVEL DISSEISIN:

If the plaintiff's release be pleaded in bar of the Assise, it may be defeated by a collateral deed of defeasance, of which the conditions have been performed, and he will recover seisin, 24-34; 29, note 6; 570-572.

Assise of, where the plaintiff had accepted a third part of the tenements in demand as dower, but without executing any deed, 86-90.

Examination of the jurors in action of Assise of, 88.

NOVEL DISSEISIN—*cont.*

Attempt of a defendant in, to oust the plaintiff from his action, by causing a writ of a higher nature to be brought against himself, in the plaintiff's name, 202-204.

Plaint in, as to common of pasture, is good, and sufficiently certain, if the right to common be alleged to be from a certain day to a certain day in the year, and from an earlier day should the tenant of the soil or any of the commoners put in their beasts on that earlier day, as this is only a possible enlargement of a certain time, 350-354, 354-358.

So also if the plaint be made in respect of common appendant for a certain number of beasts, though common appendant is, of common right, for beasts without number, 352, 358-360.

So also if the plaint be made as for divers commons for one and the same beast, 360-362.

Where the Assise found a special verdict to the effect that the plaintiff was seised in virtue of a feoffment from A. who, as heir of B., had recovered the tenements by an action of Entry in *consimili casu*, and had had seisin thereof, and that entry had been made on the plaintiff by C., who claimed to be next heir of A., and where the jurors of the Assise were examined as to C.'s age at the time of the recovery, but were not asked whether A. was the legitimate son of B., the record of the action in *consimili casu*, which included a Bishop's certificate that A. was B.'s legitimate son, was accepted as evidence of the fact, without re-examination of the Assise, and judgment was given for the plaintiff, 386-394; 395, notes 2 and 6.

NUISANCE :

(*Quod permittat prosternere.*) If an action be brought on the ground

NUISANCE—*cont.*

that a house and privy have been erected to the plaintiff's nuisance, the count or declaration may include other matters, *e.g.*, obstruction which prevents the cleaning of a trench, destruction of fish, &c., 148-152; 151, note 8.

See ABATEMENT OF WRITS.

O

OUTLAWRY :

Where an outlaw has been taken by virtue of a *Capias utlagatum* issuing from the Court of Common Pleas, and the outlawry has been reversed in the King's Bench, the former Court will not release him without having the tenor of the record from the latter Court, but will, upon suit made, send the body into the King's Bench, 116.

An *Exigi facias, allocatis Hustengis*, will not be granted on the ground that the Court of Hustings is held at uncertain intervals, and, if the outlawry is incomplete on the return of the first Exigent, a new Exigent must be sued, 582.

If one be taken by virtue of a *Capias utlagatum*, and allege that he is not the person against whom the process issued, and does not bear the same name, *Quare* the remedy, 592-594.

P

PALATINE COUNTY :

Process and jurisdiction in, 472-474.

PARCENERS :

When there has been usurpation upon one of two parceners, to whom an advowson has descended, and she dies without issue, her surviving coparcener is tenant of the entirety of the advowson, but cannot have any action as to parcel, 252.

PARTITION :

Of lands partible by custom. See
AID-PRAYER.

PERSONATION :

False, 202-204.

PLEADINGS :

See ABATEMENT OF WRITS ; ANNUITY ;
BARON AND FEME ; COSINAGE ; DAR-
REIN PRESENTMENT ; DETINUE ;
DOWER ; EJECTMENT FROM WARD-
SHIP ; FORMEDON ; NOVEL DISSEISIN ;
NUISANCE ; QUARE IMPEDIT ; RATION-
ABILI PARTE BONORUM ; RAVISHMENT
OF WARD ; REPLEVIN ; RESCOUS ;
TRESPASS ; WARRANTY.

PREBENDARY :

Holds his prebend in right of the
Chapter of the Church of which he
is Prebendary, and his mode of
holding is not affected by the fact
that the prebend has been appro-
priated to a Priory of which he is
Prior, 400.

PROCESS :

Against a Sheriff for contempt, 84.
Where vouchee makes default, 122-
124.
The same in Detinue as in Debt, 142,
144-146.
To compel witnesses to a deed to join
jurors, 324.
In Formedon brought by two parceners,
where the tenant makes default,
and one of the parceners does not
appear, 470.

PROCLAMATION :

On writ of Wardship, 280.

PROTECTION :

Allowable after the fourth day of the
plea in a plea of land, 22.
Not allowable after verdict, 220.
Not allowed to tenant, or to vouchee,
in Dower, 272-278.
Justice of *Nisi prius* has not warrant
to allow, 278.
Not allowed for one suing an *Audita
Querela* on execution of statute
merchant, because he is a plaintiff,
288-290, 294-296.
See RESUMMONS.

Q

QUARE IMPEDIT :

Where the King claimed to present as
in the right of an alien Abbot whose
possessions had been seized into his
hand, and alleged in support of his
title a previous presentation made
as in the Abbot's right by the
Abbot's procurator general, the de-
fendant was allowed the averment
that the presentee was not admitted
and instituted on the presentation
of the procurator general, as in
right of the Abbot, as well as to
show his own title, 158-182 ; 183,
note 1.

Question whether a presentation be-
fore time of memory can be alleged
in support of title, 168, 172.

No limitation of time in, 168.

In respect of presentation to a chantry,
196-198.

Where, in a declaration on behalf of
the King claiming presentation to
a prebend as in the turn of a de-
scendant of one of several parceners,
one generation was omitted in
describing the descent of the de-
fendant from another of the par-
ceners, counsel on behalf of the
King was admitted to amend the
declaration by judgment of the
Court after exception taken, 416-
424.

Where it is alleged that one had the
advowson assigned to him as the
purparty of one of several parceners,
and so became sole patron, but that
one of the other parceners subse-
quently presented, and so put him
out of possession, and where it is
admitted that the parceners made a
composition whereby they were to
present in turn, it will be held, in
the absence of any specialty to the
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in accordance with common right,

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1. **THE CHRONICLE OF ENGLAND**, by JOHN CAPGRAVE. *Edited by the Rev. F. C. HINGESTON, M.A.* 1858.

Capgrave's Chronicle extends from the creation of the world to the year 1417. Being written in English, it is of value as a record of the language spoken in Norfolk.

2. **CHRONICON MONASTERII DE ABINGDON**. Vols. I. and II. *Edited by the Rev. JOSEPH STEPHENSON, M.A., Vicar of Leighton Buzzard.* 1858.

This Chronicle traces the history of the monastery from its foundation by King Ina of Wessex, to the reign of Richard I. The author incorporates into his history various charters of the Saxon kings, as illustrating not only the history of the locality but that of the kingdom.

3. **LIVES OF EDWARD THE CONFESSOR**. I.—*La Estoire de Seint Aedward le Rei*. II.—*Vita Beati Edvardi Regis et Confessoris*. III.—*Vita Eduuardi Regis qui apud Westmonasterium requiescit*. *Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge.* 1858.

The first is a poem in French, probably written in 1245. The second is an anonymous poem, written between 1440 and 1450, which is mainly valuable as a specimen of the Latin poetry of the time. The third, also by an anonymous author, was apparently written between 1066 and 1074.

4. **MONUMENTA FRANCISCANA**.

Vol. I.—*Thomas de Eccleston de Adventu Fratrum Minorum in Angliam. Adm de Marisco Epistolæ. Registrum Fratrum Minorum Londoniæ.* *Edited by J. S. BREWER, M.A., Professor of English Literature, King's College, London.*

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5. **FASCICULI ZIZANIORUM MAGISTRI JOHANNIS WYCLIF CUM TRITICO**. Ascribed to THOMAS NETTER, of WALDEN, Provincial of the Carmelite Order in England, and Confessor to King Henry the Fifth. *Edited by the Rev. W. W. SHIRLEY, M.A., Tutor and late Fellow of Wadham College, Oxford.* 1858.

This work gives the only contemporaneous account of the rise of the Lollards.

6. **THE BUIK OF THE CRONICLIS OF SCOTLAND**; or, A Metrical Version of the History of Hector Boece; by WILLIAM STEWART. Vols. I.-III. *Edited by W. B. TURNBULL, Barrister-at-Law.* 1858.

This is a metrical translation of a Latin Prose Chronicle, written in the first half of the 16th century. The narrative begins with the earliest legends and ends with the death of James I. of Scotland, and the "evil ending of the traitors that slew him." The peculiarities of the Scottish dialect are well illustrated in this version.

7. **JOHANNIS CAPGRAVE LIBER DE ILLUSTRIBUS HENRICIS**. *Edited by the Rev. F. C. HINGESTON, M.A.* 1858.

The first part relates only to the history of the Empire from the election of Henry I. the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, from the accession of Henry I. in 1100, to 1446, which was the twenty-fourth year of the reign of Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world.

8. *HISTORIA MONASTERII S. AUGUSTINI CANTUARIENSIS* by THOMAS OF ELMHAM, formerly Monk and Treasurer of that Foundation. *Edited by* CHARLES HARDWICK, M.A., Fellow of St. Catherine's Hall, and Christian Advocate in the University of Cambridge. 1858.

This history extends from the arrival of St. Augustine in Kent until 1191.

9. *EULOGIUM (HISTORIARIUM SIVE TEMPORIS): Chronicon ab Orbe condito usque ad Annum Domini 1366*; a monacho quodam Malmesbiriensi exaratum. Vols. I.-III. *Edited by* F. S. HAYDON, B.A. 1858-1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., with a continuation to the year 1418.

10. *MEMORIALS OF HENRY THE SEVENTH; Bernardi Andreæ Tholosatis Vita Regis Henrici Septimi; necnon alia quædam ad eundem Regem Spectantia.* *Edited by* JAMES GAIRDNER. 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet Laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author; (2) the journals of Roger Machado during certain embassies to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon; (3) two curious reports by envoys sent to Spain in 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples; and (4) an account of Philip of Castile's reception in England in 1506. Other documents of interest are given in an appendix.

11. *MEMORIALS OF HENRY THE FIFTH. I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhams Liber Metricus de Henrico V.* *Edited by* CHARLES A. COLE. 1858.

12. *MUNIMENTÆ GILDHALLÆ LONDONIENSIS; Liber Albus, Liber Custumarum, et Liber Horn, in archivis Gildhallæ asservati.*

Vol. I., Liber Albus.

Vol. II. (in Two Parts), Liber Custumarum.

Vol. III., Translation of the Anglo-Norman Passages in Liber Albus, Glossaries, Appendices, and Index.

Edited by HENRY THOMAS RILKY, M.A., Barrister-at-Law. 1859-1862.

The *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, gives an account of the laws, regulations, and institutions of that City in the 12th, 13th, 14th, and early part of the 15th centuries. The *Liber Custumarum* was compiled in the early part of the 14th century during the reign of Edward II. It also gives an account of the laws, regulations, and institutions of the City of London in the 12th, 13th, and early part of the 14th centuries.

13. *CHRONICA JOHANNIS DE OXENEDES.* *Edited by* SIR HENRY ELLIS, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa, it substantially begins with the reign of King Alfred, and comes down to 1292. It is particularly valuable for notices of events in the eastern portions of the kingdom.

14. *A COLLECTION OF POLITICAL POEMS AND SONGS RELATING TO ENGLISH HISTORY, FROM THE ACCESSION OF EDWARD III. TO THE REIGN OF HENRY VIII.* Vols. I. and II. *Edited by* THOMAS WRIGHT, M.A. 1859-1861.

15. The "OPUS TERTIUM," "OPUS MINUS," &c. of ROGER BACON. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1859.

16. *BARTHOLOMÆI DE COTTON, MONACHI NORWICENSIS, HISTORIA ANGLICANA; 449-1298; necnon ejusdem Liber de Archiepiscopis et Episcopis Angliæ.* *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge, 1859.

17. *BRUT Y TYWYSOGION; or, The Chronicle of the Princes of Wales.* *Edited by* the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

This work, written in the ancient Welsh language, begins with the abdication and death of Caedwala at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.

18. **A COLLECTION OF ROYAL AND HISTORICAL LETTERS DURING THE REIGN OF HENRY IV. 1399-1404.** Edited by the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1860.
19. **THE REPRESSOR OF OVER MUCH BLAMING OF THE CLERGY.** By REGINALD PEOCK, sometime Bishop of Chichester. Vols. I. and II. Edited by the Rev. CHURCHILL BABINGTON, B.D., Fellow of St. John's College, Cambridge. 1860.

The author was born about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1450. His work gives a full account of the views of the Lollards, and has great value for the philologist.

20. **ANNALES CAMBRIÆ.** Edited by the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

These annals, which are in Latin, commence in 447, and come down to 1288. The earlier portion appears to be taken from an Irish Chronicle used by Tigernach, and by the compiler of the Annals of Ulster.

21. **THE WORKS OF GIRALDUS CAMBRENSIS.** Vols. I.-IV. Edited by the Rev. J. S. BREWER, M.A., Professor of English Literature, King's College, London. Vols. V.-VII. Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. Vol. VIII. Edited by GEORGE F. WARNER, M.A., of the Department of MSS., British Museum. 1861-1891.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John.

The *Topographia Hibernica* (in Vol. V.) is the result of Giraldus' two visits to Ireland, the first in 1185, the second in 1185-6, when he accompanied Prince John into that country. The *Expugnatio Hibernica* was written about 1189. Vol. VI. contains the *Itinerarium Cambrie et Descriptio Cambrie*; and Vol. VII., the lives of S. Remigius and S. Hugh. Vol. VIII. contains the Treatise *De Principum Instructione*, and an index to Vols. I.-IV. and VIII.

22. **LETTERS AND PAPERS ILLUSTRATIVE OF THE WARS OF THE ENGLISH IN FRANCE DURING THE REIGN OF HENRY THE SIXTH, KING OF ENGLAND,** Vol. I., and Vol. II. (in Two Parts). Edited by the Rev. JOSEPH STEVENSON, M.A., Vicar of Leighton Buzzard. 1861-1864.

23. **THE ANGLO-SAXON CHRONICLE, ACCORDING TO THE SEVERAL ORIGINAL AUTHORITIES.** Vol. I., Original Texts. Vol. II., Translation. Edited and translated by BENJAMIN THORPE, Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography.

24. **LETTERS AND PAPERS ILLUSTRATIVE OF THE REIGNS OF RICHARD III. AND HENRY VII.** Vols. I. and II. Edited by JAMES GARDINER, 1861-1863.

The principal contents of the volumes are some diplomatic Papers of Richard III., correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole, Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. **LETTERS OF BISHOP GROSSETESTE.** Edited by the Rev. HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The letters of Robert Grosseteste range in date from about 1210 to 1263. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. **DESCRIPTIVE CATALOGUE OF MANUSCRIPTS RELATING TO THE HISTORY OF GREAT BRITAIN AND IRELAND.** Vol. I. (in Two Parts); Anterior to the Norman Invasion. (*Out of print.*) Vol. II.; 1066-1200. Vol. III.; 1200-1327. By Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Records. 1862-1871.

27. **ROYAL AND OTHER HISTORICAL LETTERS ILLUSTRATIVE OF THE REIGN OF HENRY III.** Vol. I., 1216-1235. Vol. II., 1236-1272. Selected and edited by the Rev. W. W. SHIRLEY, D.D., Regius Professor of Ecclesiastical History, and Canon of Christ Church, Oxford. 1862-1866.

28. *CHRONICA MONASTERII S. ALBANI*:—

1. THOMÆ WALSHINGHAM HISTORIA ANGLICANA; Vol. I., 1272-1361: Vol. II., 1381-1422.
2. WILLELMI RISHANGER CHRONICA ET ANNALES, 1259-1307.
3. JOHANNIS DE TROKELowe ET HENRICI DE BLANEFORDE CHRONICA ET ANNALES 1259-1296; 1307-1324; 1392-1406.
4. GESTA ABBATUM MONASTERII S. ALBANI, A THOMA WALSHINGHAM, REGNANTE RICARDO SECUNDO, EJUSDEM ECCLESIAE PRÆCENTORE, COMPILATA; Vol. I., 793-1290: Vol. II., 1290-1349: Vol. III., 1349-1411.
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6. REGISTRA QUORUNDAM ABBATUM MONASTERII S. ALBANI, QUI SÆCULO XV^{mo} FLORUERE; Vol. I., REGISTRUM ABBATIS JOHANNIS WHETHAMSTEDE, ABBATIS MONASTERII SANCTI ALBANI, ITERUM SUSCEPTÆ; ROBERTO BLAKENY, CAPELLANO, QUONDAM ADSCRIPTUM: Vol. II., REGISTRA JOHANNIS WHETHAMSTEDE, WILLELMI ALBON, ET WILLELMI WALINGFORDE, ABBATUM MONASTERII SANCTI ALBANI, CUM APPENDICE, CONTINENTE QUASDAM EPISTOLAS A JOHANNE WHETHAMSTEDE CONSCRIPTAS.
7. YPODIGMA NEUSTRIÆ A THOMA WALSHINGHAM, QUONDAM MONACHO MONASTERII S. ALBANI, CONSCRIPTUM.

Edited by HENRY THOMAS RILEY, M.A., Barrister-at-Law. 1863-1876.

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Walsingham, Precentor of St. Albans.

In the 3rd volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I.: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291-1292, also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1292 to 1300, by an unknown hand: a short Chronicle, Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the 4th volume is a Chronicle of English History, 1259 to 1296: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blanford: a full Chronicle of English History, 1392 to 1406, and an account of the benefactors of St. Albans, written in the early part of the 15th century.

The 5th, 6th, and 7th volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham, with a Continuation.

The 8th and 9th volumes, in continuation of the Annals, contain a Chronicle probably of John Amundesham, a monk of St. Albans.

The 10th and 11th volumes relate especially to the acts and proceedings of Abbots Whethamstede, Albon, and Walingford.

The 12th volume contains a compendious History of England to the reign of Henry V. and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V.

29. *CHRONICON ABBATIE EVESHAMENSIS, AUCTORIBUS DOMINICO PRIORE EVESHAMIE ET THOMA DE MARLEBERGE ABBATE, A FUNDATIONE AD ANNUM 1213, UNA CUM CONTINUATIONE AD ANNUM 1418.* *Edited by* the Rev. W. D. MACRAY, Bodleian Library, Oxford. 1863.

The Chronicle of Evesham illustrates the history of that important monastery from 690 to 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey. Interspersed are many notices of general, personal, and local history.

30. *RICARDI DE CIRENCESTRIA SPECULUM HISTORIALE DE GESTIS REGUM ANGLIÆ.* Vol. I., 447-871. Vol. II., 872-1066. *Edited by* JOHN E. B. MAYOR, M.A., Fellow of St. John's College, Cambridge. 1863-1869.

Richard of Cirencester's history is in four books, and gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Sudbury, a monk of Westminster, fills book ii. c. 8.

31. *YEAR BOOKS OF THE REIGNS OF EDWARD THE FIRST AND EDWARD THE THIRD.* Years 20-21, 21-22, 30-31, 32-33, and 33-35 Edw. I.; and 11-12 Edw. III. *Edited and translated by* ALFRED JOHN HORWOOD, Barrister-at-Law. Years 12-13, 13-14, 14, 14-15, 15 and 16 Edward III. *Edited and translated by* LUKE OWEN PIKE, M.A., Barrister-at-Law. 1863-1900.

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33. **HISTORIA ET CARTULARIUM MONASTERII S. PETRI GLOUCESTRIÆ.** Vols. I.-III. *Edited by W. H. HART, F.S.A., Membre Correspondant de la Société des Antiquaires de Normandie.* 1863-1867.
34. **ALEXANDRI NECKAM DE NATURIS RERUM LIBRI DUO;** with NECKAM'S POEM, DE LAUDIBUS DIVINÆ SAPIENTIÆ. *Edited by THOMAS WRIGHT, M.A.* 1863.
35. **LEECHDOMS, WORTCUNNING, AND STARCRAFT OF EARLY ENGLAND;** being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest. Vols. I.-III. *Collected and edited by the Rev. T. OSWALD COCKAYNE, M.A.* 1864-1866.
36. **ANNALES MONASTICI.**
 Vol. I.:—Annales de Margan, 1066-1232; Annales de Theokesberia, 1066-1263; Annales de Burton, 1004-1263.
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 Vol. V.:—Index and Glossary.
Edited by HENRY RICHARDS LUARDS, M.A., Fellow and Assistant Tutor of Trinity College, and Registrar of the University, Cambridge. 1864-1869.
37. **MAGNA VITA S. HUGONIS EPISCOPI LINCOLNIENSIS.** *Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire.* 1864.
38. **CHRONICLES AND MEMORIALS OF THE REIGN OF RICHARD THE FIRST.**
 Vol. I.:—ITINERARIUM PEREGRINORUM ET GESTA REGIS RICARDI.
 Vol. II.:—EPISTOLÆ CANTUARIENSES; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199.
Edited by the Rev. WILLIAM STUBBS, M.A., Vicar of Navestock, Essex, and Lambeth Librarian. 1864-1865.
- The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London.
 The letters in Vol. II., written between 1187 and 1199, had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to found a college of secular canons, a project which gave great umbrage to the monks of Canterbury.
39. **RECUEIL DES CRONIQUES ET ANCHIENNES ISTORIES DE LA GRANT BREITAIGNE A PRESENT NOMME ENGLETERRE,** par JEHAN DE WAURIN. Vol. I., Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. *Edited by WILLIAM HARDY, F.S.A.* 1864-1879. Vol. IV., 1431-1447. Vol. V., 1447-1471. *Edited by Sir WILLIAM HARDY, F.S.A., and EDWARD L. C. P. HARDY, F.S.A.* 1884-1891.
40. **A COLLECTION OF THE CHRONICLES AND ANCIENT HISTORIES OF GREAT BRITAIN, NOW CALLED ENGLAND,** by JOHN DE WAURIN. Vol. I., Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. (Translations of the preceding Vols. I., II., and III.) *Edited and translated by Sir WILLIAM HARDY, F.S.A., and EDWARD L. C. P. HARDY, F.S.A.* 1864-1891.

41. **POLYCHRONICON RANULPHI HIGDEN**, with Trevisa's Translation. Vols. I and II. *Edited by* CHURCHILL BABINGTON, B.D., Senior Fellow of St. John's College, Cambridge. Vols. III.-IX., *Edited by* the Rev. JOSEPH RAWSON LUMBY, D.D., Norrisian Professor of Divinity, Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865-1886.

This chronicle begins with the Creation, and is brought down to the reign of Edward III. The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth.

42. **LE LIVRE DE REIS DE BRITTANIE & LE LIVRE DE REIS DE ENGLETERE.** *Edited by* the Rev. JOHN GLOVER, M.A., Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treatises are valuable as careful abstracts of previous historians.

43. **CHRONICA MONASTERII DE MELSA AB ANNO 1150 USQUE AD ANNUM 1406**, Vols. I.-III. *Edited by* EDWARD AUGUSTUS BOND, Assistant Keeper of Manuscripts, and Egerton Librarian, British Museum. 1866-1868.

44. **MATTHÆI PARISIENSIS HISTORIA ANGLORUM, SIVE UT VULGO DICTUR HISTORIA MINOR.** Vols. I.-III. 1067-1253. *Edited by* Sir FREDERICK MADDEN, K.H., Keeper of the Manuscript Department of the British Museum. 1866-1869.

45. **LIBER MONASTERII DE HYDA: A CHRONICLE AND CHARTULARY OF HYDE ABBEY, WINCHESTER, 455-1023.** *Edited by* EDWARD EDWARDS. 1866.

The "Book of Hyde" is a compilation from much earlier sources, which are usually indicated with considerable care and precision. In many cases, however, the Hyde Chronicle appears to correct, to qualify, or to amplify the statements which, in substance, he adopts.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and mediæval English.

46. **CHRONICON SCOTORUM. A CHRONICLE OF IRISH AFFAIRS**, from the earliest times to 1135; and **SUPPLEMENT**, containing the events from 1141 to 1160. *Edited, with Translation, by* WILLIAM MAUNSELL HENNESSY, M.R.I.A. 1866.

47. **THE CHRONICLE OF PIERRE DE LANGTOFT, IN FRENCH VERSE, FROM THE EARLIEST PERIOD TO THE DEATH OF EDWARD I.** Vols. I. and II. *Edited by* THOMAS WRIGHT, M.A. 1866-1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire and lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first, is an abridgment of Geoffrey of Monmouth's "Historia Britonum"; in the second, a history of the Anglo-Saxon and Normankings, to the death of Henry III.; in the third, a history of the reign of Edward I. The language is a specimen of the French of Yorkshire.

48. **THE WAR OF THE GAEDHIL WITH THE GAILL, OR THE INVASIONS OF IRELAND BY THE DANES AND OTHER NORSEMEN.** *Edited, with a Translation, by* the Rev. JAMES HENTHORN TODD, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University of Dublin. 1867.

49. **GESTA REGIS HENRICI SECUNDI BENEDICTI ABBATIS. CHRONICLE OF THE REIGNS OF HENRY II. AND RICHARD I., 1169-1192**, known under the name of BENEDICT OF PETERBOROUGH. Vols. I. and II. *Edited by* the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History, Oxford, and Lambeth Librarian. 1867.

50. **MUNIMENTA ACADEMICA, OR, DOCUMENTS ILLUSTRATIVE OF ACADEMICAL LIFE AND STUDIES AT OXFORD** (in Two Parts). *Edited by* the Rev. HENRY ANSTEE, M.A., Vicar of St. Wendron, Cornwall, and late Vice-Principal of St. Mary Hall, Oxford. 1868.

51. *CHRONICA MAGISTRI ROGERI DE HOVEDENE. Vols. I.-IV. Edited by the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History and Fellow of Oriel College, Oxford. 1868-1871.*

The earlier portion, extending from 733 to 1148, appears to be a copy of a compilation made in Northumbria about 1161, to which Hoveden added little. From 1148 to 1160—a very valuable portion of this work—the matter is derived from another source, to which Hoveden appears to have supplied little. From 1170 to 1193 is the portion which corresponds to some extent with the Chronicle known under the name of Benedict of Peterborough (*see* No. 49). From 1193 to 1201 may be said to be wholly Hoveden's work.

52. *WILLELMI MALMESBIRIENSIS MONACHI DE GESTIS PONTIFICUM ANGLORUM LIBRI QUINQUE. Edited by N. E. S. A. HAMILTON, of the Department of Manuscripts, British Museum. 1870.*

53. *HISTORIC AND MUNICIPAL DOCUMENTS OF IRELAND, FROM THE ARCHIVES OF THE CITY OF DUBLIN, &c. 1172-1920. Edited by JOHN T. GILBERT, F.S.A., Secretary of the Public Record Office of Ireland. 1870.*

54. *THE ANNALS OF LOCH CE. A CHRONICLE OF IRISH AFFAIRS, FROM 1041 to 1690. Vols. I. and II. Edited, with a Translation, by WILLIAM MAUNSELL HENNESSY, M.R.I.A. 1871.*

55. *MONUMENTA JURIDICA. THE BLACK BOOK OF THE ADMIRALTY, WITH APPENDICES, Vols. I.-IV. Edited by Sir TRAVERS TWISS, Q.C., D.C.L. 1871-1876.*

This book contains the ancient ordinances and laws relating to the navy.

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